DOCUMENT RESUME

ED 222 594 UD 022 549

AUTHOR	Fragomen, Austin T., Jr., Ed.; Tomasi, Lydio F., Ed.
TITLE	In Defense of the Alien. Volume III. Immigration Law and Legal Representation. Proceedings of the Annual Legal Conference on the Representation of Aliens (New York, New York, March 20-21, 1980). First Edition.
INSTITUTION	Center for Migration Studies, Inc., Staten Island, N.Y.
REPORT NO	ISBN-0-913-256-55-2
PUB DATE	80
NOTE	119p.; Not available in paper copy due to institution's restrictions. For related documents, see UD 022 547-550.
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	Church Role; *Civil Liberties; Demography; *Federal Legislation; Humanitarianism; Illegal Immigrants; *Immigrants; *Labor Force; Migrant Employment; *Public Policy; Refugees; *Social Services; Socioeconomic Influences
IDENTIFIERS	Fourth Amendment; New York (New York); Select Commission Immigration Refugee Policy

ABSTRACT

This volume presents viewpoints of immigration law experts, policy makers, and representatives from the private sector on reforms of U.S. immigration/refugee law and policy proposed by the Select Commission on Immigration and Refugee Policy. Areas analyzed include effects of immigration and immigration policy on the U.S. population and on the labor market; proposals to adopt the guest-worker programs of Europe in the United States; effects and implications of immigration in New York City; areas of needed revision in exclusion and deportation policy; social needs of undocumented aliens and possible responses of social and religious agencies; social attitudes toward undocumented aliens; and the status of enforcement of the Fourth Amendment in immigration law and of the labor certification requirement as it applies to aliens. Contributors include Doris M. Meissner, Charles B. Keely, Michael S. Teitelbaum, David S. North, Edwin P. Reubens, Carol Bellamy, Sam Bernsen, Maurice A. Roberts, Anthony J. Bevilacqua, Jay Mazur, Norman Hill, Klaus Feldman, Austin T. Fragomen, Jr., and Leon Wildes. (MJL)

****

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

****

ED222594

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY
M. SULLIVAN
CMS
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

IN DEFENSE OF THE ALIEN

VOLUME III

Immigration Law and Legal Representation

Proceedings of the 1980 Annual Legal Conference
on the Representation of Aliens
March 20 and 21, 1980
New York, New York

EDITED BY
AUSTIN T. FRAGOMEN, JR. and LYDIO F. TOMASI

UD 022 549

1980
Center for Migration Studies
New York

The Center for Migration Studies (CMS) is an educational, non-profit institute founded in New York in 1964 to encourage and facilitate the study of sociological, demographic, historical, legislative and pastoral aspects of human migration and ethnic group relations. CMS organizes an annual legal conference on immigration, the proceedings of which are published regularly in a volume series entitled **In Defense of the Alien.** *This text represents the third volume of that series.*

IN DEFENSE OF THE ALIEN
VOLUME III
Representation of Aliens
First Edition

Copyright © 1981 by
The Center for Migration Studies of New York, Inc.
All rights reserved. No part of this book may be reproduced
without permission from the publisher.

Center for Migration Studies
209 Flagg Place
Staten Island, New York 10304
ISBN 0-913-256-55-2
Library of Congress Catalog Card Number 80-68465
Printed in the United States of America

CONTENTS

Introduction vii

PART I

1 Opening Remarks 3
Doris M. Meissner

2 Impact of Immigration Policy Upon U.S. Population 5
Charles B. Keely

3 Factual and Ethical Issues Surrounding Guestworker Proposals 13
Michael S. Teitelbaum

4 Impact of International Migration on U.S. Labor Market 19
David S. North

5 Alien Workers in the U.S. Labor Market: Implications for Immigration Policy 29
Edwin P. Reubens

6 Address 41
Carol Bellamy

7 Needed Revision of Grounds of Exclusion: Marijuana, Communists, Homosexuals and Polygamists 45
Sam Bernsen

8 Grounds of Deportation: Statute of Limitations and Clarification of the Nature of Deportation 55
Maurice A. Roberts

9 Service Response of Social Agencies and the Church to the Needs of Undocumented Aliens 67
Anthony J. Bevilacqua

10 The New Immigration: A Labor Response 75
Jay Mazur

11 Panel Remarks 83
Norman Hill

PART II

12 Opening Remarks 87
Klaus Feldman

13 Fourth Amendment Considerations in Immigration Law 89
Austin T. Fragomen, Jr.

14 Department of Labor: Toward a Sound Approach to Labor Certification 97
Leon Wildes

Table of Cases 117

Index 119

Introduction

THIS volume on *Legislative Reform of Immigration Laws and Social Policies* represents the third volume in the CMS series entitled Defense of the Alien and contains the proceedings of the Third Annual Legal National Conference on Immigration organized by the Center for Migration Studies of New York, Inc., and held in New York City, at the Sheraton Centre, on March 20—21, 1980.

The Conference was designed to explore legislative reform of the Immigration and Nationality Act and to propose the revision of pertinent immigration regulations. Answering over a decade of public concern for immigration reform in the United States Congress established the Select Commission on Immigration and Refugee Policy by Public Law 95—412. During the hearings across the nation, the Commission received a multitude of conflicting and contrasting views. The *Final Report* of the Commission should be presented to the Congress and the President on March 1, 1981.

The speakers for this Conference analyzed the major areas of concern to the Select Commission, including undocumented aliens in the United States, labor market impact of immigration, effects of immigration on population, and the impact of the alien upon U.S. society. They also examined various aspects of the enforcement of the present laws by the Immigration and Naturalization Service and the implementation of current law on the Departments of Labor and State.

We are greatly indebted to the leading experts on immigration law, policy makers, representatives of the academy, foundations, organized labor and private sector for this review of the legislative and judicial aspects of immigration in terms of both its legal efficacy and its substance as a base for sound national and international policies.

The Editors

Part 1

1

Opening Remarks

DORIS M. MEISSNER*

THIS is a time in which the winds of change in immigration are gusting more reliably than at any time in recent memory.

I am referring, of course, to the establishment and work of the Select Commission on Immigration and Refugee Policy and the contribution that can be made to it.

This contribution can be made in a worthwhile, useful fashion by concentrating on several key issues and developing concrete proposals. It is a mistake to expect the Commission to address all the items on its platter. Its mandate is simply too broad. Therefore, strive for what is doable. While idealism and purity of thought is vital in the realm of ideas, what we are engaged in now will ultimately become a political exercise. If it is to be successful this reality must serve as the guidepost for all of our endeavors, for politics, it is important to remember, is the art of the possible.

Reach out beyond participation in this conference. Aside from the specific recommendations, and possibly more important, one of the major contributions of the Commission is to educate the public and organize the national policy debate surrounding immigration issues. This can only happen if people assist in bringing the issues to the forefront of agendas for the organizations and localities they represent in their professional and private lives. In those settings, encourage discussion, organize convention positions and resolutions, write articles, educate the media, etc.

Within the federal government and, specifically, within the Department of Justice and the Immigration and Naturalization Service, the Commission is providing important opportunities as well.

We recognize that the fundamental problems in immigration cannot be resolved until the law is reworked and that this is not possible until the Commission reports, at the earliest. Nonetheless, there is a great deal of change that does not require legislation and that can be extremely beneficial. To accomplish it, however, requires a turning inward and a commitment to affirmative self-examination and administrative reform.

---

*Deputy Associate Attorney General, U.S. Department of Justice.

Turning inward is what we are doing presently. It is the existence of the Commission which provides the opportunity, for it removes from the Immigration Service and the Executive Branch the pressure to solve the larger, fundamental problems at this time.

The priorities of the Attorney General, the new leadership of the Immigration and Naturalization Service and the Congress will include improved management of the Immigration Service.

That emphasis has begun during the past several months with actions taken by Acting Commissioner David Crossland and by the establishment of a two year management review of the agency. This review is being carried out by a team of systems and data processing experts who are located in the agency itself and are working with senior officials on the full range of agency operations.

In addition, we look forward to marked improvements in: 1) integrity issues, *viz.* appointment of a special investigator; 2) clear ordering and articulation of enforcement priorities; 3) nonimmigrant control; 4) streamlining casework and adjudicatory processes through the instroduction of computers but also with renewed emphasis on non-ADP solutions wherever possible; 5) naturalization; 6) a commitment to increased internal and external communication and consultation, and 7) new incentives to instill attitudes of friendliness and responsiveness to the public in Immigration Service employees.

In reciting such a litany, we must be honest and allow that it is not a glamorous agenda. However, it does represent the guts of the agency and its work and improvements in these areas have enormous potential for results and for useful change that will improve morale, service and the circumstances of vast numbers of people in this country, aliens and citizens alike.

2

Impact of Immigration Policy Upon U.S. Population

CHARLES B. KEELY[*]

THE schedule for this conference and the proceedings which result devote the bulk of the social science analysis, as opposed to the strictly legal analysis, to the effects of immigration on the U.S. population and on the labor force. This is another example of the old saw that the squeeky wheels get the oil. In the public debate on immigration policy now focused in the Select Commission and in what will follow in the Congress as legislation containing the Commission's recommendations is considered, population and environmental groups are the most vocal of the advocates.

I and my fellow demographers, along with population and environmental advocacy groups, are part of a medium sized industry based on population projections. Our business may be more familiar to some under the term demographics, knowledge of the size, distribution, characteristics and changes in human populations. Knowledge about the future of human populations is built, on the one hand, on solid ground and, on the other hand, on very weak ground. Population projections, a major tool used by demographers and advocacy groups to make their points, basically tries to tell us what would happen in the future if given rates of fertility, mortality and migration continue. These projections are on firm ground because the mathematics of fertility, mortality and migration are known. If I know the size of the current population and its age distribution and I am also privy to the levels of fertility and mortality by age, I can tell you, with absolute certitude, what the population would be ten, fifteen or any number of years from now, if those rates continue. Although the mathematics are often more elegant, we are basically dealing with the grammer school problem of principle x rate x time. As with a bank loan, if I know those pieces of information, I know how much I will pay in interest over one or three or five years, although banks try their hardest, it seems, to complicate such calculations. Where I am on

[*] The Population Council, The Population Council of New York; Member of the Board of Directors, American Immigration and Citizenship Conference.

shaky ground, however, is that I cannot be sure that the fertility or mortality rates in the future will be what they are now or what I presume they will be for my projections. It is as if the bank may, or may not, raise or lower, the interest rate on my loan and I do not know for sure, although I may have some ideas, what their course of action will be. So projection is not a prediction. A projection tells us what will be the case only if the assumptions are correct.

The population and environmental groups started out with a very useful and important insight, even if it seems fairly pedestrian by now: the earth is limited. If population growth continues indefinitely, we will run out of space. We will run out of resources first and natural correctives like famine or manmade correctives like war will intervene before the earth provides standing room only. There is another side to this absolute logic. In countries like many of those in Europe and the U.S., where the current fertility is below replacement, if current trends persist, we will breed ourselves out of existence, "autogenicide", in the long run. The problem with all these projections used to raise consciousness about rates is that they talk about a long run and they assume an unchanging situation. They assume that the resources will remain the same; they assume there will be no inventiveness. It reminds me of the story told as a warning on the misuse of projections. If someone in 1880 projected that the population of New York City in 1980 would be 7 million, he would have been thought to be crazy. Common sense would have made clear that environmental pollution and solid waste problems from horses would become overwhelming. It is ironic that the automobile was the answer to an environmental problem early in the century. Such a criticism would have assumed no change in transportation. Unless we assume a possibility of change, projections of constant growth will be projections of disaster.

Of course, technology changes and rates will decline. The question is when, at what tempo and with what correctives to bring about the changes. The population and environmental people are doomsdayers. They try to scare us. We ought not, however, to write them off as people trying to mislead us. On the contrary, I think they are sincere. Sincerity is not always a blessing: some kinds of sincerity are so confused that they are worse than lies. That is the situation we are in now.

Many in the population and environmental movement have lost the insights and goals that fundamentally inspired them. They have forgotten why they began. They rightly tell us we all live in an interdependent world. Many of the same voices in the U.S. now tell us we should follow a lifeboat ethic in regard to immigrants — we should keep them out. They are basically arguing for restrictions, a much reduced level of migration to the U.S. It does not bother them apparently that these arguments are contradictory:

one cannot live a lifeboat ethic, beating people away with your oars, in a world that is in fact interdependent and from which our lifeboat requires materials, trade and a variety of economic and political alliances. The general view of the restrictionists is that immigrants are uncontrollably increasing; they are threatening; and they will lead the country to a situation of inevitable population growth and therefore, environmental deterioration. Specifically, they deal with three issues which I will review rather briefly.

The first issue the population advocates raise is whether immigration at current levels will prevent the U.S. from achieving zero population growth — a stable, no growth population. No growth advocates generally answer in the affirmative. It should be noted that there is a presumption that no growth is desirable. That is not a universally shared opinion, particularly for the short or medium term. the earth has an ultimate carrying capacity. It is a big jump from that truism to conclude that we know the optimum size for each nation state on the globe, with a huge variety of political and economic systems and clearly unequal access to the technology affecting productivity and distribution. The question is should we try to stop population growth in the U.S. as soon as feasible. There is no universal agreement to that proposition. Even if one accepts that we should try to achieve no growth sooner rather than later, it is well to keep in mind that fertility rates are now below replacement. In plain terms, every woman has to have on the average of two children to replace the population. The average actually required in the U.S. is about 2.115 because, for example, not all women bear children and the ratio of males to females born is not exactly one-to-one. The U.S. is now below the rate required for replacement. On the average, women in this country have about 1.85 children. We are on a path to zero growth. It will take a while for us to get to zero growth because of the age structure resulting from the postwar baby boom. But we are on the path and the path does not end at zero growth. Continued below replacement fertility means population decline. European countries are ahead of the U.S. on this road and now record more deaths than births. Any population growth in those countries is due to immigration.

A second factor to keep in mind in a discussion on population growth is that the major variable affecting population growth is not migration and not mortality; it is fertility. A question arises then, about whether the current low fertility rates in the U.S. will rise again. There are two possible ways in which the answer to this question could be affirmative. The first is that there could be another baby boom. Fertility levels could go up for a while, for ten or fifteen years or perhaps for a generation of childbearers, and then return to the historical trend of declining fertility that has been going on for five hundred years in the West. No one predicted the baby boom of the late 40s and 50s and so population analysts are a bit gun shy on the issue.

Another possible basis for predicting a trend reversal is to assume that current levels, even though they are part of a long term decline, are below the long term level they will ultimately assume, which will be at replacement. The momentum of decline leads to a bottoming out and a rise to a level that would be slightly higher than current fertility rates of 1.85. Think of yourself going along at 70 m.p.h. in your car, when suddenly you see a radar trap ahead. You take your foot off the gas and hit the brake. You go from 70 m.p.h. down to 50. You don't stay at 50: that is just bottoming out. You ease your way up to 55. Current fertility levels could be such a bottoming out to be followed by an ultimate level nearer to the replacement level.

There is disagreement about both the baby boom and bottoming out arguments as predictive bases for an increase in U.S. fertility. Most, but by no means all, population scientists could say that the possibility of a significant trend reversal in fertility is not great for the near or medium term. The reasons for this position are numerous. There is high prevalence of contraceptive use in this society. There is a good deal of use of abortion. There is a high level of education, a factor historically connected with low fertility. There is high female labor force participation. There is a low level of availability of quality day-care services and few organized incentives to have children as used in some Eastern European countries, for example, by permitting women perhaps to stay home from three to six months after delivery with a high percentage of pay or special access to housing or financing after births. Finally, the biggest argument of all is the fact that women are getting married later and having their first child at later ages. One of the most effective contraceptives is increased age at marriage. In other words, all of the economic and social factors such as labor force participation, changing roles of women, contraception, childlessness and so on, all argue for continued low fertility rates. If there is to be a turnaround in fertility trends, it would require major changes in behavior, in labor force composition, in the structure of the economy and changes in sex roles in this society. If one can assume all those changes will take place, we might go back to larger families. "Larger families" in this context refers to a couple's decision to have their third or fourth child.

What does all this mean in terms of immigration. If current fertility trends are continued, immigration at a level of 800,000 annual net additions would still result in zero population growth. In other words, despite all the no growth advocates' claims and dire predictions, the U.S. could absorb a net immigration from all sources, legal and illegal, of 800,000 net, permanent additions, each and every year from now into the future and, with current fertility trends, would still achieve and maintain zero population growth.

The second major issue raised by the population and environmental advocates is the question of illegal movement into the U.S. There are two aspects to this issue: 1) what is the current size of, and 2) what is the annual increment to, the resident illegal or undocumented population. Here again we run into some powerful momentum. The public has been told for so long that illegal migration is menacingly large and growing uncontrollably that we have come to believe it. We still see references that the estimated illegal population in the U.S. is between 2 to 12 million. It is time somebody said such statements, with their broad ranges, are not only baseless, they are also misleading. They are not harmless, for they muddy the waters of discourse and lead to confusion and fear guiding policy. We have absolutely no information, no reasonable believable data sources that would indicate illegal migrants currently in the U.S. number 12 million. There are a number of claims to the effect. But we do not have data that would convince anyone trained in demography, indeed any reasonable person who can add and subtract, that the numbers could possibly be that high. I would argue we do not have data sources to indicate that the numbers could be of the order of 8 million. We do have fairly good information that the numbers are probably on the order of 4 million or 5 million undocumented persons in the U.S. at any given time.

The second aspect is how many people are being added to the stock of illegal residents every year. Here our best information is that the number varies from year to year. We had a fairly large increment in undocumented migration in the late 1960s, followed by a slowing down in the early 1970s, and an increase again in the middle to late 70s. In the 60s the growth was primarily, and somewhat surprisingly, in the Northeast and North Central states. In the middle 70s the major growth was in the Southwestern states. The probable net addition of permanent settlers from illegal sources probably is nowhere beyond 250,000 a year. I would challenge anybody who says that it is a million a year to give any convincing, systematic information or data to support such a claim. When I say data, I do not include off the cuff estimates of border patrol agents relying on their "street wisdom". That is like asking an air freight guard in New York's JFK airport what amount or percentage of air cargo in the entire country is stolen and whether he thinks that cargo theft is increasing. Such statements are hardly reliable ways to form national policy. The kind of corroborating evidence that would be instructive includes, for example, looking at death rates. If so many illegal migrants are coming into the U.S. and were not counted in the census of 1970, as they probably were not, then when death rates are calculated (the number of deaths per thousand people), we should have higher than expected death rates. The excess in the expected rate gives a clue as to how many illegal residents there are. The numerator of a death rate is the number of deaths; in this case the number of deaths to young adult males would be of particular interest. Those deaths are probably registered because people hardly want to sneak bodies across the border to avoid being counted in the death statistics. The result is an inflated numerator, the deaths, and a denominator that would not include the undocumented persons in the age and sex groups of interest.

One expects, therefore, higher death rates for young adult males in states where illegal migrants are concentrated. In fact, that is the case in states like New York and Illinois, as well as states like Texas and California, states where one would expect undocumented people are concentrated. Although higher than one would expect if there were no illegal migration, those higher death rates over the last 15 years do not support an estimate of 12 million illegal residents or an annual net addition of one million a year since the late 1960s, when the upswing in illegal migration is supposed to have taken place. If there had been a million net additions of illegal residents a year, let us say from 1968, by this time we would have 12 million people out there somewhere, or slightly less allowing for some mortality. Unfortunately for the doomsdayers, they are not showing up in death statistics and they should, if they were here. The big numbers estimates, the kinds that some say are supposed to sensitize us, I would say are supposed to scare us, are baseless. I await someone to present systematic information to indicate that numbers are as big as 10 to 12 million and to explain why administrative records like death statistics have not registered the sharp rises one would expect if we had 12 million intruders.

The third issue raised by a handful of advocates is brought up as a code word, the "composition" of immigration. I will not dignify racial or ethnic arguments by even discussing them. I will only caution vigilance. When people discuss population composition in reference to immigration, they are not referring to changes in the age profile from year to year.

Finally, I might mention a side issue resulting from concern over immigration in general, and from undocumented movement in particular. I refer to the issue of immigrants and the census of 1980. A suit, filed in the Federal District Court for the District of Columbia at the initiative of a group called the Federation of Americans for Immigration Reform, petitioned for an injunction against carrying out the census as planned. The relief sought would have held up the census, unless undocumented persons were counted separately and removed from the counts used to apportion the House of Representatives and state legislatures and to distribute federal funds for programs using population in their formulae for fund disbursement. In one affidavit filed by the plaintiffs, a former census appointee suggested subtracting the number of people who registered in the January Alien Registration Program from the number of noncitizens counted in the census. Assuming at least some illegal residents are counted in the census but do not register each January, then the difference between the census count of noncitizens and the total registering in the alien address report represents undocumented migrants. Such a proposal makes all kinds of assumptions about the completeness of both records systems. How inane a suggestion it is, was underscored in an affidavit by a Census Bureau employee filed by the defendants which pointed out that in 1970 more people signed up in the January registration than noncitizens were counted in the census. There was an undercount of aliens in the 1970 census. You would have had to add people to the census according to that methodology to get a correct count of the population, apportion Congress, and distribute federal funds.

The Court dismissed the case because they held that the plaintiffs had no standing. The Court opinion went on to say that the requested relief would not have been granted, *i.e.*, delaying the census, since the only method suggested to estimate illegal residents, outlined above, would require a 1980 census . The Court went on to say that, even if they were to hear the case, they would have decided against the plaintiffs on Constitutional grounds. The suit was silly as argued because it would have required a reading of the Constitution, as the Court pointed out, that would have assumed that the framers of the Constitution and the Congress and legislatures ratifying the 16th Amendment meant the word "persons" in the sections of the Constitution and of the 16th Amendment referring to the census to mean something other than persons, some subclass of human beings, even though the word persons was used in clear distinction from the word citizen in paragraphs surrounding those sections on the census. If you accept the logic that you should not count an undocumented person because of the one person, one vote doctrine, a misleading summary phrase of the Court ruling on the apportionment of state legislatures, then one should not count children for apportionment purposes, because they cannot vote. You should not count persons who are imprisoned, because they are not allowed to vote. The Court said that they agreed with the interpretation that when the Constitution says to count persons, it means persons. Apportionment is on the basis of persons, not voters or citizens as a long list of decisions reiterates.

I think the suit was not only silly but also irresponsible. I think it irresponsible because, if the relief sought was granted, there would have been a tremendous loss to the nation in time, money and vital information, not just to the government but also to the economy. We need to know as a nation who we are, what we are like, where we live, and how we behave so that we can plan not only for public policy and programs but also for private enterprise. Second, the absence of a suit would probably have decreased the size of the undercount. The suit probably led some people to be more afraid of the census and of the uses to which it might be put than if there had been no suit. All the publicity that surrounded the suit and the attention it received from ethnic organizations arguably reduced confidence in the confidentiality of the census.

This discussion has ranged over a number of issues relating immigration to population; whether immigration, legal and illegal, prevents achievement of zero growth; what the number and annual net additions of illegal migrants are; caution about the reappearance of race and ethnic prejudice in immigration debate under the code word "composition"; and the more immediate issue of illegal residents and the 1980 Census. Despite the squeeky wheels, despite the well-organized groups that are involved in pressing their point of view, a sincere but often misguided effort, the population dimension of immigration is not the major problem in charting the course of U.S. immigration policy from now until the year 2000. As the Select Commission sets about its task of recommending such policy, as Congress eventually deliberates on changes to be enacted into law, it is well to remember that total, net migration to the U.S. could reach a level of 800,000 net permanent settlers every year and we still would achieve a no-growth population. This level includes legal and illegal migrations; it includes emigration from the U.S. which has been sizeable in the late 1960s and early 1970s, on the order of 150,000 annually. Immigration is not the population problem that some make it out to be. In fact, if we continue immigration at current levels we would attain zero growth in the year 2050 with a population of about 275 million, after which population decline would begin.

A bit of recent history might add some perspective at this point. In 1970, the U.S. had a Commission on Population Growth in the American Future formed because of concern that the U.S. would have 300 million people by the year 2000. At current fertility levels, however, and net additions from immigration, the U.S. population will never reach 300 million. We will achieve no growth and begin declining from a total population below 300 million most likely well before the year 2050. This does not present a major problem to the country in terms of environment and resources as we have been led to believe by advocates who seem sincerely concerned about this society. I think it is best to ignore their advice and not be cowed by their rantings.

3

Factual and Ethical Issues Surrounding Guest-Worker Proposals

MICHAEL S. TEITELBAUM*

BY academic standards, the field of immigration studies is a remarkably weak one. It is weak in terms of the number of scholars in the field, the number and quality of institutions dealing with the issues and, unhappily, in the quality and objectivity of some of the better-known commentators. The organizers of the *In Defense of the Aliens* conference are to be congratulated for inviting two of the leading researchers on guestworker programs who do not suffer from these problems of objectivity.

American immigration policy has traditionally been based upon principles of 1)openness, 2) humanitarian concerns (*e.g.*, refugees, family reunification, etc.), 3) labor force needs of the American economy and 4) domestic fairness and national coherence. It is important to note that these principles are often in conflict with one another. During times of economic hardship and high unemployment, labor force needs may be minimal but humanitarian and openness concerns may nonetheless require a generous immigration policy. At the same time, large-scale immigration may have negative consequences for important disadvantaged sectors of the American resident population, *e.g.*, minorities, youth, women, recent immigrants, etc., thereby raising questions of fairness in the sharing of burdens. Such problems naturally arise in all discussions of guestworker programs and the various other options available for American policymakers. Yet the almost inevitable conflicts among the principles governing immigration policy are rarely recognized explicitly.

The paper by Professor Reubens represents an interesting discussion of some of the issues surrounding guestworker options. Reubens has clearly given careful thought to many of the debates concerning the current flow of undocumented or illegal migrants, which he sees as a threat to disadvantaged American workers. His policy alternatives seek a regularization of this flow through reform and expansion of the temporary worker program currently in place. Reubens provides a good discussion of the pros and cons of guestworker programs in this regard, as contrasted with alternative regularization of undocumented flow through permanent immigration quota increases.

---

* Population Division, Ford Foundation

Some of Reubens' propositions are debatable, however, especially his predictions about the future. For example, he appears to assume that the present crisis flows of refugees from Indochina are temporary, and that the pressure for refugee migration will decline over the coming several years. While all predictions about the future are to be doubted, it seems at least as likely that refugee pressures will not decline and indeed may increase over the coming years. In fact, the recent crisis in Indochina may be the harbinger of an increased frequency and volume of refugee flows over the coming decades. While Reubens' assumption of the temporary nature of the present situation may be correct, it is hardly the kind of assumption that can be used as a basis for policy prescriptions of a medium-to-long-term nature.

One must also doubt Reubens' prediction that there is a "marked prospective need for aliens" in the labor force by 1985. Projections of labor force demand and supply have been notoriously inaccurate over the past decade. Most labor force supply projections failed to anticipate the rapidity of growth of female labor force participation. Most of the demand projections fail to anticipate the long-term continuation of high unemployment. The projections used by Reubens assume full employment by 1985 — an optimistic prediction which may in fact be more desirable than likely.

Reubens' assertion that legal and illegal immigrants do not increase demand on low-rent housing, hospital services, welfare, etc., also warrants closer examination. Surely he is correct in dismissing the xenophobic assertions by some that the growth of government-supported services is related to immigration. On the other hand, he is factually wrong in stating that legal immigrants do not strain local resources because "they spread rather widely across the country". In fact, 44 percent of legal immigrants settle in two states (California and New York) and 69 percent in six (California, New York, Florida, New Jersey, Illinois and Texas). Some local problems are likely to arise from such concentrations.

Facts concerning the impacts of undocumented migrants on social services are far less clear than Reubens implies. While the majority of the roughly 60 percent who are Mexican may be in the "young, single adults without dependents" category he describes, the remaining 40 percent appear to be comprised of both workers and their dependent families. In general, it must be noted that Reubens'use of data from the 1976 North-Houstoun study may be quite misleading. In a more recent analysis, [1] North himself reports evidence of much higher utilization of social services by undocumented aliens.

---

[1] David S. North, *Congressional Record*, Dec. 20, 1979, S-19525. Mr. North cites data from: Los Angeles County, Department of Public Social Services, Bureau of Special Operations, "Alien Status Verification Activity Quarterly Report", May 1, 1979. This data is quoted as part

Utilization of various social services by undocumented aliens is likely to range from quite high to very low — probably high for public hospital outpatient facilities (the classic "family doctor" of the American poor); moderate for welfare, Medicaid, food stamps, etc.; low for social security. Estimates of utilization rates of welfare and associated services are clouded by nearly insurmountable problems of identification; no one knows how many on the social service rolls are using fraudulent birth certificates, driver's licenses, and other identification readily available on the black market.

Social security utilization is likely to be low because most of the undocumented population is younger than retirement age. However, those who become permanent residents will be eligible for social security upon retirement, and given the redistribution structure of the social security system, and the relatively low average pay of undocumented workers, they will draw out more than they have paid in.

Reubens also may be misinterpreting the 1970 estimates by North and Houstoun that 73.2 percent of their sample of apprehended illegal aliens reported paying federal income tax. This figure, even if accurate, now doubtful according to North, cannot be taken to mean that illegal aliens pay sufficient income taxes to pay for the public services they use. Such an intepretation fails to recall the progressive structure of the income tax. Single workers at the minimum wage would expect to pay federal income tax of only $500, or 8 percent, even if they do not (as Reubens notes is common) exaggerate their exemptions to minimize withholding. The claiming of two exemptions would reduce this to only $158 or 2 percent.

Reuben's discussion of "competition" between undocumented workers and domestic disadvantaged groups gives insufficient attention to direct effects. While one-on-one competition is probably relatively rare, the distortions imposed by a large population of eager and compliant workers has been recognized by all economists since Marx. To Marx, this preservation of the "reserve army of the unemployed" was a conscious strategem of the captains of industry, so as to lower wages and reduce prospects for labor organization. To neoclassical economists it represents a disequilibrium between demand and supply of labor that leads to a relative deterioration of real wages and conditions in the affected sector of the labor market. Either way, the likely

---

of Mr. North's response to the report of work done by Dr. Wayne Cornelius, appearing in the *Congressional Record*, Dec. 13, 1979. The title of Dr. Cornelius' paper cited in that transcript is "Mexican Migration to the United States: Causes, Consequences and United States Responses", Migration and Development Study Group, Center for International Studies, Massachusetts Institute of Technology: July 1978.

effects cannot be dismissed because they are not direct.

Reubens' comments on the population growth implications of legal and illegal immigration are lacking in demographic sophistication. The 0.5 percent population growth attributed by Reubens to immigration, described by him as "relatively small", is in fact far larger than the natural increase of 0.1 percent for the whole of Western Europe. Developed countries together, including the relatively rapidly growing United States, are averaging rates of natural increase of perhaps 0.7 percent. Against these frames, 0.5 percent hardly seems "relatively small".

Finally, Reubens' discussion of the alternative of guestworker program needs to be better informed by European experience. The European countries that initiated these programs in the 1960s had booming economies with record-low unemployment rates and severe, if short-term, shortages of labor. The U.S. can hardly be said to be in a similar situation in the 1980s. In this regard, it is worth noting that most European countries now have essentially terminated the influx of guestworkers and are attempting to export those who remain.

David North deserves our thanks for his fair-minded assessment of Wayne Cornelius' widely-promoted and oft-cited data on unemployment rates in cities with high concentrations of undocumented workers. Cornelius' calculations, in which the unemployment rate of Los Angeles' labor force is given equal weight with that of Oklahoma City only one-tenth its size, are seriously deficient.[2] In any other field, they would long ago have been relegated to the burial ground of the fundamentally flawed or even outright errors of calculation. It is symptomatic of the unscientific (even anti-scientific) nature of the subject under discussion here that these same Cornelius estimates were incorporated *in extenso* in the *Congressional Record* as recently as last December 13, 1979.[3] If anything, North's criticism of this work are more restrained and gentlemanly than they should be.

In the setting of an otherwise clear article, North's specification of the likely impacts of an increasing supply of undocumented workers is an example of concision verging on opacity. His list is:

1) Illegal migrants will maintain or increase productivity;

2) They will maintain or increase profits;

---

[2] This is not the only problem, for there is also serious doubt regarding the choice of the cities compared, as North points out.

[3] Dr. Wayne Cornelius, "Mexican Migration to the United States: Causes, Consequences and United States Responses", Migration and Development Study Group, Center for International Studies, Massachusetts Institute of Technology: July, 1978, cited in *Congressional Record*, Dec. 13, 1979, S-18455.

3) They will maintain or increase the use of labor-intensive work systems and structures;
4) They will maintain or depress labor standards in the secondary sector; and
5) They will compete successfully with low-skilled, low-status U.S. workers, such as Spanish speaking Americans, blacks, legal immigrants and the young.

This is unsatisfactory because it fails to discuss the likely relative weights of these effects. If profits or productivity are increased, then by how much? If labor standards in the secondary sector are depressed, again by how much? If there is to be successful competition with low-skilled, low-status workers, then with what severity of impact, and what consequences for government efforts to improve the circumstances of these groups? While North's listing has logic to it, it is conceivable that one effect could be small while another is profound. North's paper or subsequent works could aid in our consideration of these issues by a more expansive discussion.

Related to these questions is a point of close agreement between Reubens and North, and a suitable one on which to end this commentary. Both authors agree that negative consequences of undocumented migration fall most heavily upon the disadvantaged sectors of the U.S. population — the poor, the black, the Hispanic, the young, the female and the recent legal migrant. Their agreement on this point reflects a widespread concern among virtually all analysts, in a field otherwise noted for its almost total lack of consensus.

Given this consensus, those whose humanitarian concerns are for the welfare of the undocumented and for the poor of other lands seeking illegal entry to the United States must recognize that the disadvantaged already in the U.S. are also deserving of their humanitarian concern.

It is a classic dilemma of conscience that rarely surfaces in debates about this issue, but it is one that true humanitarians cannot fail to confront and resolve.

4

Impact of International Migration on the U.S. Labor Market

DAVID S. NORTH*

THE question before us is: what are the impacts of international migration on the U.S. labor market? It seems to be a fairly easy question, but it is note; the answers to it are complex and multifaceted. There are four factors which must be considered. They are:

1) Numbers: How many migrants are there, and where do they settle?
2) Characteristics: What are the demographic and labor market characteristics of the migrants?
3) Status: What is their legal status?
4) State of the labor market: What is the condition of the labor market as they arrive?

Clearly, the labor market impact would be of little significance if:

1) The numbers were small, and the distribution across the land were an even one;
2) Most of the migrants came either with skills in short supply or with sufficient capital so that they stayed out of the labor market;
3) The migrants were of the same legal status as the workers in the host nation — not second class citizens, nor conquerors;
4) The labor market genuinely needed workers, as it did in the U.S. in the last century, and as it does now in the sheikdoms of the Persian Gulf.

If these conditions are not met, as they are not in the U.S. now, then the nature of the labor market impacts of migrants becomes a matter worthy of discussion. Where do we stand now regarding the four factors?

As to the numbers and distribution, it is clear that the numbers are rising and the traditional migrant tendency to cluster is continuing. All indices of migration are rising, as Table 1 indicates. This is the case whether we are discussing legal immigrants, nonimmigrants or illegal migrants. The days of

---

* Director, Center for Labor and Migration, New TransCentury Foundation.

TABLE 1

Indices of Migration to the United States, Legal and Illegal, 1970 and 1977
(ranked in descending order by 1977 percent)

Migration Index	1970	1977	1977 as Percent of 1970
Denials of Entry (Illegal)	256,079	874,123	341.3
Gap Between Deportations/Required Departures and Apprehensions (Illegal)	25,112	78,833 [a]	313.9
Apprehensions (Illegal)	325,188	1,016,734 [b]	312.7
INS Apprehension Effectiveness (based on officer hours per apprehension) (Illegal)	14.07 (index 100)	5.90 (index 238.5)	238.5
Nonimmigrant Visas Refused (Illegal) [c]	194,943	366,151 [d]	187.8
Nonimmigrant Admissions (Legal)	4,431,880	8,036,916	181.3
Deportations (Illegal)	16,893	30,228	178.9
Nonimmigrant Visas Granted (Legal)	2,148,901	3,683,533 [d]	171.4
Immigrant Admissions (Legal)	373,326	462,315	123.8
(a) Outside Numerical Limits	86,043	185,815	(215.8)
(b) Within Numerical Limits	287,283	276,500	(96.2)
Entries of Aliens (Legal)	126,478,119	150,267,505	118.8

Source: David S. North, "Analyzing the Apprehension Statistics of the Immigration and Naturalization Service", paper presented for the U.S. Department of Labor, Nov., 1979.

Notes: (a) Excludes Silva case "apprehensions" *see,* footnote.

(b) Silva case "apprehensions" are included in this number. Were the 66,139 cases omitted, it would reduce apprehensions to 950,59[illegible] or 292.3% of the 1970 level.

(c) Totals do not reflect visa refusals overcome: 1976, there were 88,546 refusals overcome, but comparable data are not available for 1970 for comparison.

(d) Data for 1976 — 1977 not available.

the 400,000-a-year immigrant cohorts are clearly behind us. There were 462,315 Immigration and Naturalization Service recorded admissions in fiscal 1977, 601,442 in fiscal 1978 and INS does not yet know how many arrived in fiscal 1979. The government's lack of interest in demography is illustrated not only by the lack of 1979 INS admission data, but also by the State Department's statistical failings — the understaffed Visa Office has published no data for fiscal 1977 and 1978, much less for 1979.

Two indices of nonimmigrant desires to visit the U.S. are admissions and visa refusals. While nonimmigrants are not supposed to be interesting demographically, because they are supposed to stay only temporarily, many of them, in fact, spend the rest of their lives here. The number of nonimmigrant admissions doubled between 1970 and 1978, totaling more than 8,000,000 in the latter year. The number of nonimmigrant visa refusals also doubled in the same time period, topping 350,000 in 1976; this is a measure of intercepted would-be illegal migrants, but one which is rarely mentioned.

It is within this context of rapidly rising indices of international migration that we should view the ever-increasing INS apprehension figures. They have been over a million in each of the last three fiscal years, about triple the level at the beginning of the decade. We have examined these figures carefully, and are content that they do not reflect additional border patrol resources to any significant degree. This is indicated by the number of officer hours per apprehension, which fell sharply in the 1970s, from 14.07 hours per apprehension to 5.90 hours in 1977. This suggests that what is increasing is the size of the flow.

Regarding distribution, legal immigrants appear to have a penchant for settling in large cities, with 57 percent of the 1977 cohort going to cities of over 100,000 population. In comparison, 28 percent of the U.S. population, in 1970, lived in such cities. Immigrants particularly favor 19 center cities such as New York, Miami and Los Angeles, with more than 2,000 new immigrants going to each of these cities; 44 percent of the 1977 immigrants settled in those places, which is home for 11 percent of the total U.S. population[1] We suspect that the patterns of settlement of illegal aliens reflect those of recently arrived legal immigrants from the same nations of origin.

Legal immigrants not only tend to settle in center cities, but they also seem to choose those cities where unemployment rates are above the U.S. average, as Tables 2 and 3 indicate. Table 2 shows the cities which attract proportionately the largest flows of immigrants generally, and Table 3, those cities most attractive to immigrants from Mexico. In both tables, the higher the proportion

---

[1] Immigrant settlement data from *INS Annual Report*, 1977, Table 12A; city population data (1976 estimates) from *Statistical Abstract of the United States, 1978*, Table 24.

TABLE 2

Major U.S. Cities Which Had a High Percentage of 1976 Arriving Immigrants to Resident Population, Their 1978 Unemployment Rate, the Size of Their Labor Force, and the Number of Unemployed
(ranked in ascending order of ratios)

City of Intended Residence	Ratio of 1976 Immigrants to Area Populations [a]	1978 Unemployment Rate	Labor Force (000s)	Number of Unemployed (000s)
Miami, Fla.	1:23	8.1	202.7	16.4
Elizabeth, N.J.	1:61	7.4	57.2	4.3
San Francisco, Calif.	1:66	6.8	397.9	27.2
Honolulu, H.	1:66	7.6	313.9	23.8
Hialeah, Fla.	1:81	6.5	63.0	4.1
New York, N.Y.	1:103	8.9	3,033.0	270.0
Paterson, N.J.	1:104	11.5	58.5	7.6
New Bedford, Mass.	1:113	8.8	51.7	4.5
Newark, N.J.	1:118	12.0	165.4	19.9
El Paso, Tx.	1:124	9.2	156.4	14.4
Cambridge, Mass.	1:129	6.6	54.5	3.6
Las Vegas, Nev.	1:138	5.4	85.6	4.6
Jersey City, N.J.	1:146	9.9	104.0	10.3
Los Angeles, Calif.	1:148	7.7	1,418.6	109.2
Average	n/a	8.4%	6,162.4	519.9

TABLE 2 (continued)

Alexandria, Va.	1:151	5.4	56.2	3.0
Glendale, Calif.	1:152	5.0	71.9	3.6
Hartford, Conn.	1:152	6.6	67.2	4.7
Chicago, Ill.	1:172	7.3	1,610.5	118.3
Santa Ana, Calif.	1:190	5.6	107.0	6.0
Stockton, Calif.	1:194	11.3	59.7	6.7
Average	n/a	7.2%	1,972.5	142.3
San Diego, Calif.	1:225	6.8	366.1	24.8
Yonkers, N.Y.	1:230	6.4	104.5	6.7
Oakland, Calif.	1:234	8.4	176.7	14.8
Providence, R.I.	1:236	7.4	86.4	6.4
San Jose, Calif.	1:242	6.7	264.0	17.8
Bridgeport, Conn.	1:246	7.2	62.9	4.9
Seattle, Wash.	1:249	5.9	308.3	18.1
Sacramento, Calif.	1:257	8.2	146.5	11.9
Torrence, Calif.	1:275	5.1	72.0	3.7
Fresno, Calif.	1:282	8.1	107.3	8.7
Houston, Tx.	1:285	4.2	834.5	35.0
Fort Lauderdale, Fla.	1:293	6.2	91.7	5.7
Tacoma, Wash.	1:299	8.2	71.2	5.8
Average	n/a	6.1%	2,692.1	164.3

Notes: *See.* Table 3 for Source

n/a — not available.

(a) 1975 population estimates used in computing ratios.

of arriving immigrants to the total population generally, the higher the unemployment rate. The national rate for the year studied, 1978, was 6.0 percent. I am not seeking to prove a direct cause-and-effect relationship here, but simply want to record my disagreement with Wayne Cornelius' notion that the places in the U.S. which are most impacted by illegal migrants from Mexico have lower than average unemployment rates. [2]

As to the economic characteristics of the migrants, the legal migrants look very much like the U.S. population generally, the nonimmigrants (who work) are a very mixed lot which we cannot describe here, and the illegal ones are generally unskilled. There are some ironies at work here — while the flow of neices and nephews of U.S. citizens continues undisturbed, the migration selection system has recently decided that we no longer need substantial numbers of foreign medical graduates, and we certainly do not need aliens who want to come to the U.S. to invest their capital. Given these developments, the apparent increasing numbers of illegal migrants, and the change in the occupational mix of the current flow of Indochinese refugees, it appears that the skill level of the arriving migrants is lower now than it was a few years ago.

The legal status of migrants makes an enormous difference in the nature of labor market impacts — a point that cannot be stressed too often. The legal immigrants who have most of the rights of resident workers are less likely to be exploited than legal ones. As Barry Chiswick and I have found, using totally different data sources, the males among the legal immigrants, after a dozen years or so, reach the earnings levels of their U.S.-born peers, when factors such as age, education and marital status are held constant. I found that immigrant women reach and surpass the earnings levels of resident women much more quickly than men do.

Some nonimmigrants, such as foreign students, are not tied to their employer in any way, and can move around freely in the labor market. Others, such as many in the H—1 and L—1 categories are advantaged, highly skilled persons, generally doing needed work, and able to take care of themselves in the labor market. The nonimmigrants I worry about are those tied to employers — particularly the H—2 farmworkers. They are brought to the U.S. only if their presence increases the profits of their employers. They are a remarkably docile labor force, and the U.S. government helps keep them that way. If, for example, a sugarcane cutter seeks higher wages, or otherwise

---

[2] For more on his view on that subject and mine, *see*, *Congressional Record* of December 13, 1979, p. S-18455 and Dec. 20, 1979, p. S-19523.

[3] *See*, Barry R. Chiswick, "The Effect of Americanization on the Earnings of Foreign-Born Men", *Journal of Political Economy* 86:897 – 921 1978, and David S. North, *Seven Years Later: The Experiences of the 1970 Cohort of Immigrants in the U.S. Labor Market*. Washington: TransCentury, 1978, p. 54.

TABLE 3

Major U.S. Cities Which Had a High Proportion of 1976 Arriving Mexican Immigrants to Resident Population, Their 1978 Unemployment Rate, the Size of Their Labor Force, and the Number of Unemployed (ranked in ascending order of ratios)

City of Intended Residence	Ratio of 1976 Mexican Immigrants to U.S. Population[a]	1978 Unemployment Rate[b]	Labor Force (000s)(000s)	Number of Unemployed
El Paso, Tx.	1:139	9.2	156.4	14.4
Santa Ana, Calif.	1:279	5.6	107.0	6.0
Stockton, Calif.	1:398	11.3	59.7	6.7
Los Angeles, Calif.	1:407	7.7	1,418.6	109.2
San Antonio, Tx.	1:496	6.5	317.0	20.8
Average	n/a	7.6%	2,058.7	151.3
Houston, Tx.	1:567	4.2	834.5	35.0
Fort Worth, Tx.	1:672	5.2	224.6	11.6
Chicago, Ill.	1:689	7.3	1,610.5	118.3
Pasadena, Calif.	1:714	5.4	57.5	3.1
Average	n/a	6.2%	2,727.1	168.0
Glendale, Calif.	1:812	5.0	71.9	3.7
San Diego, Calif.	1:857	6.8	366.1	24.8
Fresno, Calif.	1:888	8.1	107.3	8.7
Torrence, Calif.	1:901	5.1	72.0	3.7
Dallas, Tx.	1:902	4.0	498.5	19.9
Anaheim, Calif.	1:916	5.3	128.6	6.8
San Jose, Calif.	1:958	5.3	264.0	17.8
Tucson, Ariz.	1:992	5.7	138.6	8.0
Average	n/a	5.7%	1,647.0	93.4

Source: Ratio of 1976 arriving Mexican immigrants to population computed from *INS Annual Report, 1976,* Table 12A (for immigrants), and *The World Almanac and Book of Facts,* 1977, pp. 234 – 235 (for population). 1978 labor market data from computer printout supplied by Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, U.S. Department of Labor.

Notes: (a) Population data for 1973 estimates.

(b) Data are for annual averages. The national annual average unemployment rate for that year was 6.0%. Derived from David S. North, "Commentary on the Cornelius Report", appearing in *Congressional Record,* Dec. 13, 1979.

disturbs an employer, he is not only fired, he is deported and blacklisted, so that he may never come back to the U.S. as an H—2 farmworker. It is no wonder that growers want to keep their H—2s — under what other circumstances this side of slavery can you obtain that kind of power over a worker, and then be rewarded with a 9 percent discount on their wages? Congress grants the discount by allowing employers of agricultural H—2s to avoid both social security and unemployment insurance taxes.

As for the illegals, their willingness to work hard for low wages, and their total powerlessness in the labor market are all too well known to require further discussion.

Regarding the shape of the labor market, we continue to find ourselves with about six million more resident workers than our economy can absorb.

The impacts of international migration on the labor market clearly are mixed. At current levels of immigration — which should be continued for noneconomic reasons — the impact of legal immigrants on the labor market is not a matter of concern. It would be helpful, however, if the labor market rights of permanent resident aliens were expanded — but the Supreme Court seems to be moving in exactly the opposite direction. Similarly, the impact of foreign students on the labor market is not worrisome, although there is no need to admit alien students to attend private-for-profit schools, which teach television set repair, hair styling or the English language.

I worry more than Ed Reubens does about the possible expansion of the temporary alien worker program, the H—2 program, particularly as it is now constituted. That program not only depresses wages and working conditions in the micro areas it impacts, thereby hurting some of the most disadvantaged U.S. workers, the minority farm workers, but it also preserves, in a strange sort of time machine, 19th century labor-management relations. As Phil Martin, of the University of California at Davis, has suggested, if U.S. employers think that they cannot pay enough money to secure U.S. workers, then they should be permitted to apply to the government for a direct subsidy to meet their labor needs, as Chrysler has applied to the government for a capital subsidy. We do not do that now for the sugar and apple industries; we give them an indirect subsidy by allowing them to reach into the Third World for their work force.

The most troublesome impact of migration on the labor market comes from the undocumenteds. It is troublesome because the numbers appear to be so large, certainly in the millions, and it is troublesome because although the accumulated impact of the illegal migrants is harmful, the individual undocumented worker is generally a hard working, often frightened human being. As for the nature of the impact, I would like to start with a quotation from the otherwise perceptive series of articles on migration from Mexico in the *Washington Post*. The *Post* article of May 27, 1978 said:

> Illegal immigration can perhaps best be regarded as a covert economic bargain that benefits everyone involved. It is beneficial to the immigrants, who even at $2.00 an hour earn three times what they might make in their homeland. It is beneficial for the big growers, the hotel owners, and the factory managers who have a huge cheap source of readily available labor in no position to complain about pay or working conditions. And it is undoubtedly beneficial to Mexico, providing a safety valve for that country's rural poor and discontented.

The assumption riding behind this analysis is that illegal immigration has only an impact on those who are directly involved. I think that the nation will want to look beyond such a simplistic point of view.

In a study which Marion Houstoun and I prepared for the U.S. Department of Labor, [4] we examined the various impacts on our society of illegal immigration, both direct and indirect. Clearly, there are those who profit from illegal immigration in our society, as the *Post* has noted, although illegal immigration helps private employers only; public employers, such as school districts, cities, counties and states are unlikely to employ illegal aliens. However, what the *Post* ignores in its "covert economic bargain" are the two major indirect impacts of illegal immigration:

1) The economic impacts on the labor market and the labor force; and
2) The social impact on this nation, a threat to America as an egalitarian society.

Depending upon the degree of which illegal migrants cluster in specific U.S. labor markets, their numbers and the pre-illegal entry conditions of those markets (*e.g.*, the presence of unions, the enforcement of the minimum wage laws), an increasing supply of highly motivated but low-skilled, poorly educated, and often non-English speaking undocumenteds, with no bargaining power in the U.S. labor market, is likely to produce one or more of the following five kinds of interdependent impacts on the markets they enter:

1) Illegal migrants will maintain or increase productivity;
2) They will maintain or increase profits;
3) They will maintain or increase the use of labor-intensive work systems and structures;

---

[4] *David S. North and Marion F. Houstoun, the Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Explatory Study.* Washington: U.S. Department of Labor, March, 1976. Part of this paper is drawn from that report.

4) They will maintain or depress labor standards in the secondary sector; and

5) They will compete successfully with low-skilled, low-status U.S. workers, such as Spanish speaking Americans, blacks, legal immigrants and the young.

Clearly, the kinds of impacts that I have just described are even more distressing in times of substantial unemployment; and high unemployment rates appear to be a near-permanent part of our economic picture.

Both directly and indirectly, then, illegal migrants appear at best to preserve and probably depress labor standards, as well as to displace low-skilled, low-status legal workers in markets where they cluster. Further, as the educational and the skill level of the U.S. work force continues to rise, and the barriers to economic advancement by minority members and women are lowered, an increasing flow of such radically more disadvantaged workers is likely to result in a self-fulfilling prophecy as it apparently often has in the Southwest borderlands: the creation of jobs that "no American worker wants"; *i.e.*, the institutionalization of a dual labor market.

At bottom, a decision — by either commission or omission — to permit the entry of large numbers of illegal migrants into the work force sanctions the creation of an economically, socially and politically disparate two-class society of legal advantaged citizens and illegal disadvantaged workers.

Thus, despite the undeniable contribution to the gross national product and to the profits of their employers that these productive workers bring to the U.S. labor market, their presence and continued flow into the nation raise troubling social and political questions. In the last analysis, a decision to employ disenfranchised persons in the labor market — whether they are illegal migrants or temporary alien workers, like the *braceros* of old — as low-wage, low-skill and low-status workers in an attempt to acquire that labor but to avoid its economic and social costs. Ours is supposed to be an egalitarian society. But to the extent that substantial numbers of aliens are *de facto* — or — *de jure* — permitted to work in its least attractive jobs, but are excluded by law from full participation in the United States labor market and society at large, to that extent we are, of course, not an egalitarian society.

5

Alien Workers in the U.S. Labor Market: Implications for Immigration Policy

EDWIN P. REUBENS*

POLICY making is extraordinarily difficult in this country of innumerable special interest groups, each seeking its own goals at whatever cost to the whole society. Some commentators even doubt that a coherent national policy is possible under these circumstances. Among these problems, immigration policy appears to be one of the most difficult — by comparison with anti-inflation policy for example — to make, evaluate and improve our programs.

While these policy areas have in common the problems of inadequate data and complex interrelationships (economic, political, social and moral), at least the goal of anti-inflation policy is clear and generally accepted: namely, to bring down the rate of inflation to two or three percent a year, if not actually to zero. But in immigration policy, the goal, or set of goals, is obscure and in dispute. Thus it is common in this country to state as a promise: "We are a nation of immigrants", suggesting that we are especially sympathetic and receptive to foreigners seeking asylum from political oppression, material poverty, adversities of all kinds. This is perhaps no less accurate than the assertion that "We are a nation conceived in revolution". For in truth we have evolved, over the past two centuries, into a middle class society that is as defensive against new immigrants who might want shares in our employment and prosperity, as it is hostile to radicals of the Left and the Right, or to culturally different groups, who might subvert our established "way of life".

Immigration Criteria and Practices

Our particular confusion in immigration goals involves three quite different criteria for admission of foreigners for settlement here: the goal of "reuniting families"; the goal of "meeting the needs of the labor market"; and the goal of providing "asylum for refugees". It is commonly supposed that our present immigration system, with its set of seven "preferences" within fixed numerical quotas, gives approximately equal weight to those three goals, or at least ranks them according to some rationale. But in fact there is no discoverable rationale behind either the size of the overall quotas or the relative weighting of the component groups. While the family goal is by far preponderant, and the refugee goal is minimal, except in times of "emergencies" such as the Cuban exodus and the Vietnamese "boat people", the needs of the labor market account for a small share of the preferential admissions; up to ten percent of the quota admissions come under Preference 3, which is for "Professional, Technical and Kindred Personnel", known as PTK, and up to another ten percent come under Preference 6, which is for "Other Workers". In 1977, for example, of all the 460,000 immigration entries, both quota and non-quota, or just over two percent came in through occupational screening, not counting their dependents.

---

*Professor of Economics. City College of New York

Of course, many of the other authorized immigrants — entering on other preferences or outside the quotas — intend to get jobs here, and do so. In practice, about sixty percent of all immigrants actually enter our labor force. This is a contribution of about 250,000 workers per year — raised by about half again now due to the special admission of refugees from Vietnam.

Besides those, the demand of our economy for foreign workers is being met by two very different inflows. First are the authorized "temporary workers," holders of H—1 and H—2 visas, plus "exchange visitors" and intra-company transferees, who total about 110,000 workers a year plus their dependents. This category is very nearly a revolving stock, since most of them stay no more than one year. Second is the unregulated and far more troublesome category of "illegal aliens" or "undocumented workers", who are entering in vastly larger numbers that have soared from small amounts ten years ago. In the nature of the case, little is known about the actual numbers of these illegal entrants — their annual inflow rate, their accumulated stock, their lengths of stay, their return rates — but there is little doubt that their gross inflow rate is in the hundreds of thousands each year, and that their accumulated stock numbers some millions of persons; and that their main objective is to get a job in the U.S., such that nearly all of them enter our labor force.

Dimensions of Immigration

Because of the deficient information on the illegal entrants, it is difficult to reach a consensus on the aggregate annual inflow of all foreign workers. Yet we must set up some order of magnitude for this phenomenon in order to evaluate its importance and significance; and we cannot evade the issue by falling back on mere indices of trends, as some commentators prefer to do, because a rapid rate of growth in a very small stock need not pose any serious problem for us, while even a slow growth of an already large stock may be very troublesome. Accordingly, we suggest for the present discussion some aggregate figures which combine the fairly well-known elements of legal immigrants who enter our labor force with estimates of the illegal workers using several different converging approaches.[1] For net annual

---

[1] The estimates of foreign workers given in this paper are drawn, with some revisions and updating, from flow calculations set forth in E.R. Reubens, "Aliens, Jobs and Immigration Policy" *The Public Interest,* Spring 1978. The resulting figures are consistent with the best informed current estimates.

The estimate for the current net inflow of foreign workers, at close to 1 million annually, is derived from INS reports on the actual numbers of admissions of authorized permanent and temporary aliens and apprehensions of illegal entrants at the border and elsewhere. To these data have been applied estimated ratios of duplications among persons apprehended in each year, evading entrants in proportion to apprehended persons, estimated short stays and return flows and labor force participation rates.

The reported admissions of authorized permanent settlers, at approximately 400,000 a year, reduced by a 25 percent return rate (based on intercensal data), and further reduced in terms of a 60 percent labor participation rate (derived from the Domestic Council report on immigration, Dec. 1976), yield a figure of 180,000 net annual inflow of these foreign workers. In addition, the present special program of admissions of refugees, mostly from Vietnam and from Cuba, at approximately 200,000 a year, reduced by an assumed 50 percent labor participation rate in view of large proportions of nonworking dependents, and assuming virtually zero returns for the present, yields a figure of 100,000 net annual inflow of these foreign workers. In further addition, the various programs admitting temporary foreign workers (mostly on H—1 and H—2 visas and Exchange Visitors), at approximately 100,000 a year (assuming that entrants for a few months balance those staying more than a year, to give an average of a one year stay), and accordingly assuming an annually revolving stock with 100 percent labor participation (their dependents are not counted here), yield a current revolving net annual figure of 100,000 full-time equivalent foreign workers of this type.

To the foregoing legal admissions of foreign workers is added the estimate of the current net illegal inflow. Beginning with the reported apprehensions, at approximately one million a year, this figure is reduced to 600,000 because of estimated duplications of apprehended persons during the year, and then doubled to represent the number of successful evaders in estimated proportion to those apprehended (both of these estimated ratios were obtained from experienced INS agents in five of the District Offices dealing with the largest inflows of illegals). We apply to the figure of 1,200,000 annual illegal entrants a labor participation rate of 80 percent in view of the predominance of young, able-bodied adults in this inflow; and then deduct as much as 40 percent for short stays and return flows. These calculations yield a figure of 600,000 net current inflow of illegal foreign workers (full year equivalent workers who stay on here).

The sum of all the foregoing classes yields an aggregate annual figure of close to one million current net inflow of foreign workers of all these kinds.

The estimate for the present stock of foreign workers of all kinds is primarily a net accumulation (gross inflows reduced for return flows and inactivity) over the span of the past eight years, 1972—79, inclusive.

For the authorized permanent settlers, at the annual figure of 180,000 net inflow, sustained rather closely over these years, the accumulation comes to 1,440,000 workers. For the refugees, inflow of foreign workers — *i.e.*, gross inflows less estimated return flows, annually over recent years — we suggest a range of 600,000 to 1 million per year counting both reported legal and estimated illegal entrants. For the present stock of foreign workers, accumulated here over the past eight years, we suggest a range of five to six million persons. It may be noted that these two estimates, the first an annual flow, the second an eight year accumulated stock, are roughly consistent with each other, and mutually reinforcing; in contrast to some currently circulating estimates which fail to reconcile their own flow and stock figures, or imply twenty years or even longer runs of their annual net inflows of illegals to build up to their asserted present stocks.

How important and significant are the flow and stock figures which we have suggested? Our estimated annual inflow of alien workers, in relation to the U.S. labor force of 100 million persons, adds between 0.6 and 1.0 percent each year. The whole labor force, as reported, grew since 1975 by almost three percent annually. Our estimated stock of alien workers amounts to five to six percent of the U.S. labor force. In relation to U.S. unemployment, if we take the measured unemployment figures of about six million, an unemployment rate of six percent, and write it down to take account of "fractional" and "voluntary" unemployment we come down to perhaps three to four million of unemployment that is directly relevant to possible alien competition; it is noteworthy that the Humphrey-Hawkins Full Employment Act now calls for reductions to the overall level of four percent unemployment as the goal of

---

whose numbers were relatively small after 1973 until 1979, an accumulation of 120,000 workers is adopted. The temporary foreign workers, treated as a revolving stock, contribute just 100,000 workers. Finally, for the illegals, whose numbers have been rising strongly during the 1970s, as far as the entry trend may be measured by the reported apprehensions, we adopt an average of 480,000 annual net inflow, and multiply by eight years, to yield an accumulation of 3,840,000 illegal workers over these years.

The sum of all the foregoing classes yields and accumulated stock of 5.5 million foreign workers of all these kinds.

The above figures are in fairly close accord with some analytic estimates for the most debatable class, the illegal alien workers. The calculation by Lancaster and Scheuren in 1978, by matching the 1973 Current Population Survey with I.R.S. income tax records and Social Security earnings and benefits records, yielded a figure of 3.9 million illegal residents aged 18—44 in 1973; almost all of these would have been in the labor force, and subsequent net inflows would almost certainly have raised this number well above the estimate of 3.84 million illegal workers as of 1979. The Lancaster and Scheuren estimates, along with several other "analytic" estimates and with the "survey" methods used by the INS and by the Mexican agency CENIET, have all been severely criticized in a paper by specialists of the U.S. Census Bureau ("Preliminary Review of Existing Studies of the Number of Illegal Residents in the United States", by J.S. Siegel, J.S. Passel, and J.G. Robinson, Jan. 1980; the authors are staff members of the Census Bureau, but this paper is not an official publication of the Census Bureau), from methodological standpoints, yet those specialists themselves settle upon 3.5 — 5.0 million as the most likely range of estimates for all the illegal residents; and an 80 percent participation rate brings the number of illegal workers to an upper limit exceeding our estimate of 3.84 above.

social policy. On the other hand, the existence of the "discouraged unemployed", who may reflect some impact of job competition by aliens, suggests higher relevant levels of U.S. unemployment.

The Impact of Immigration: Myths and Realities

The foregoing aggregate measures of reference groups must be broken down into more operative classes, as to age, sex, occupation, skill level, region of the country and particular location, *e.g.*, rural locations, inner cities, etc. In terms of such groups, we must consider five major questions about the role of alien workers in the U.S. labor market, the whole economy and the society in general, namely:

1) Do alien workers compete with Americans for jobs? Do they displace or discourage American workers, or conversely do they mainly fill existing vacancies?
2) Do alien workers depress or undercut American wages and working conditions? Do they freeze productivity and prevent the upgrading of jobs?
3) Do the alien workers cause crowding, in the aggregate or in particular activities and localities?
4) Do alien workers use many of our social services without paying for them?
5) Do alien workers produce adverse effects on the U.S. balance of international payments, or on inflationary trends?

To attempt to answer these questions is a long and complex undertaking, beset with many uncertainties. Here we will set forth only a summary of the arguments and conclusions which are more fully stated in the writer's publications over the past five years.[2]

---

[2] Publications of E.P. Reubens, 1975—80, on facts and policies of international migration:

1975. "The New Brain Drain". In *Costs and Benefits of Education*. Edited by R.L. Leiter. Cyrco Press.

1976. "Dimensions of the Brain Drain". In *The Brain Drain and Taxation*. Edited by J. Bhagwati. N. Holland Press.

1978. "Aliens, Jobs and Immigration Policy". In *The Public Interest*. Spring.

1978. "Illegal Immigration and the Mexican Economy". In *Challenge*. Nov.—Dec.

1979. "Asian Immigration in Economic Perspective". In *Occasional Papers* of U. of Maryland Law School, No. 1.

1979. *Temporary Admission of Foreign Workers*, Special Report No. 34 of National Commission for Manpower Policy, G.P.O., Washington, D.C.

1979. "Surplus Labor, Emigration and Public Policies in Mexico". In *U.S. — Mexico Economic Resolutions*. Edited by Poulson and Osborn. Westview Press.

1979. "Immigration and the Labor Force". Written testimony requested by Select Commission on Immigration and Refugee Policy, and delivered orally and in writing at Hearing, Oct. 29.

1979. "Mexican Migration to the U.S.". Address at American Assembly on Mexican-American Relations, Arden House, Nov. 1—3.

On Question # 1: Here we make use of the economic doctrines of "noncompeting groups" and of "the secondary labor market". This is to say that alien workers mostly take low-level, unpleasant, dead-end jobs which are not attractive to American workers — not attractive even to many of our unemployed, who have preferable alternatives, *e.g.*, support by family and friends, unemployment compensation, welfare payments, illicit activities. While about half of the legal immigrant workers get into white-collar work, crafts, or other highly esteemed occupations, very few of the illegal aliens are employed in these fields; [3] and even the foreign PTK, who are about ten percent of the legal immigrants, often fill in the lower levels and the less esteemed branches and localities of professional work. Thus the alien workers are mostly filling genuine vacancies, of the kinds which are expected to grow larger and more acute during the next decade or two, as the low-level jobs persist even in the most advanced economies, while native workers are less and less inclined to accept them. [4] In this light, most of the aliens are not competing with Americans for the same categories of jobs.

On Question # 2: The widespread belief that alien workers undercut American wages and working conditions rests on a small foundation of fact and a heedless extrapolation to all other cases. There is no doubt that some aliens, particularly ignorant and newcomer illegal aliens, and particularly in small, remote workplaces where they are virtually the whole work force, do get substandard wages and working conditions; and they may comply readily because those wages and conditions are vastly better than those prevailing in their homelands. However, such adverse conditions on a dual standard basis cannot easily or permanently exist in large, visible firms, particularly where pay scales are geared to machine operations, or where unionization enforces equitable treatment of the illegal alien workers, as in the many apparel plants unionized by the International Ladies' Garment Workers Union. In fact, most of the reports about low pay seem to be tied to low-level work, where the worker's marginal value product cannot support any higher scale of pay.

The element of truth in the wage complaint against alien workers is not so much that they undercut prevailing standards, as that they may retard and

---

1979. "On Immigration Policy". *The New York Times*, Op-Ed page, Dec. 15.

1980. "Immigration Problems, Limited-Visa Programs, and Other Options". Working paper for Center for Philosophy and Public Policy, U. of Maryland, Pp. 60.

[3] See, Manpower and Immigration Policies in the U.S., Special Report No. 20 of National Commission for Manpower Policy, G.P.O., Washington, D.C., 1978, Exhibit 13 and Exhibit 18.

[4] *See*, Wool and Phillips. The Labor Supply for Lower-Level Occupations. National Planning Assn. 1975: also *see*, Piora Illegal Immigration in the United States, in Illegal Aliens: an Assessment of the Issues. National Council on Employment Policy. Oct. 1976. These projections (p. 98)

[5] *Wasserman, "The Twenty-Fourth Amendment to the Warren-McCarran Act". Interpreter Releases*, 43:1.3. 1966.

block improvements in wages and working conditions. These aliens, being hard-working, reliable and docile, are welcomed by the employers. In turn, the aliens are willing to accept and adjust to the prevailing state of affairs; and thereby they preclude the scarcity conditions that might compel employers to make improvements. However, any extensive degree of such nominal "improvements" will, in the absence of technological progress, usually lead either to inflationary price rises or to destruction of the industry. In this sense, the alien workers are helping to fight inflationary trends and to preserve jobs in America, especially in gradually declining industries like garment manufacture where aliens are often the chief source of supply to replace the attrition of older American workers.

To be sure, in the long run technological progress may upgrade the low-level jobs, so as to raise their pay while reducing the number of persons employed per unit of output. Or else, for some products, foreign competition will wipe out whole industries in this country. If and when that happens, foreign workers will no longer be needed in this country, and immigration policy should then be adjusted to the new circumstances. But that prospect seems, on the whole, to be far off.

On Questions # 3, # 4 and # 5, which concern broader social and economic matters, we may point again to the widespread fallacy of "misplaced generalization", *i.e.*, extrapolating a small element of fact to apply to all possible cases. No doubt some population movements, whether of aliens or of native Americans, do cause pressures upon some localities as to housing, hospitals, schools and other social facilities and services. Wherever this happens, the locality deserves federal "assistance to impacted areas". Yet if we allow for the roll-through of the baby boom, and if in addition a particular area is demographically shrinking rather than expanding, as seems to be the case in the Northeast of this country, then there often is idle capacity in the housing, hospitals and schools.

Furthermore, the predominant group of immigrants, the illegals, comprises mostly young adults who have little need of hospitals and schools and family type housing. Still further, they pay for the social services as they pay sales taxes, property taxes, Social Security charges and income taxes.[5] Indeed, they may be said often to overpay, since most of the illegals will draw little if any benefit from the services supported by their taxes. Finally, on some other economic aggregates: alien workers do have a high rate of saving and do send home substantial remittances, such transfers to Mexico alone may run at one to two billion dollars a year. But it must be undertstood that their saving is itself deflationary, while their dollar remittances become a source of foreign purchasing power for American goods, thereby presumably stimulating American production.

---

[5] See. D. North and M. Houstoun, *Characteristics and Role of Illegal Aliens*, Chap. VI. For U.S. Labor Department. (Linton & Co., Washington, D.C., March, 1976.

Comparisons with David North's Paper

It is no doubt apparent that the preceding pages show considerable areas of agreement, and some sharp points of disagreement, with the positions expressed in David North's paper for this conference. Without minimizing the agreements, we must note the chief disparities which distinguish our two papers.

Already mentioned above is our insistence upon estimating actual numbers of immigrants, not relying solely on trends as North does in his paper, which thus departs from most of his other papers. Also already mentioned is a critical outlook upon the measured number of Americans unemployed, and upon the assumption that all of them are involuntarily unemployed and could be hired on a one-to-one basis if all the aliens were repatriated. In addition, we differ from North in recognizing the low-level, dead-end jobs persist in our society for deep-rooted reasons of technology and consumer behavior; and that filling such jobs, or any jobs, with the lowest-cost labor available in order to "increase profits", is not shameful but efficient, and is indeed merely the working of the economic market. By the same token, plentiful labor for low-level jobs does not usually inhibit technological progress, as North would like us to believe: witness the transformation of American agriculture, and the similar replacement of low-wage textile labor with capital-intensive devices not only in this country but in still lower-wage India! What prevails is the least-cost method, taking all factors into account. Convesely, it is not feasible to try to use immigration restrictions in an effort to restructure the U.S. economy.

On a more technical point regarding the labor market impact of illegals upon areas of high unemployment: North disagrees with the position taken by Wayne Cornelius, and asserts that the illegals tend to concentrate in areas that already suffer from high unemployment rates. Trying to demonstrate this position, North lists some of the principal localities which the legal immigrants declared in advance to be their intended destinations in this country, and he correlates these with unemployment rates in those localities. Unfortunately, this procedure incorporates two social fallacies: first, declared intentions are not a good guide to actual behavior; secondly, there is every reason to expect legal immigrants to join prior family settlers here, but there is also every reason to believe that illegal entrants are oriented to jobs, and seek them wherever they can be found. Thus the family oriented category is no guide to the distribution of the job oriented category. Indeed, we have numerous reports that the illegals concentrate in the U.S. regions that are booming with low unemployment rates,[6] and also in some other regions where overall unemployment rates may be high but vacancies persist nevertheless in the low-level, dead-end kinds of work.

The final implication of North's position seems to exclude the illegal alien workers as quickly and as directly as possible. That policy seems to me to be neither feasible nor desirable. Instead, I would like to suggest two alternative programs of a more constructive and adaptable sort.

A New Program of Temporary Foreign Workers (TFWs)

The first of the above-mentioned suggestion is a new and expanded version of the temporary foreign worker (TFW) program under the H—2 visa. With a great increase over the present small numbers, the program could be extended to industrial and urban as well as agricultural jobs, of the low-level kinds that are not attractive to American workers. Admissions would be authorized in variable numbers, for periods of up to three years per worker, and designated for certain ranges of occupations and regions. They would be subject not only to income taxes but also to social security and unemployment fund charges, so as to put them on the same basis as American employees. In the light of the European experience with "guest-workers", dependents would not be admitted here, but home visits would be readily available and perhaps would be facilitated, to avoid disruption of families. Fair treatment of the TFWs must be assured, under governmental supervision, to avoid the corruptions of the *bracero* era, as well as to prevent any "adverse effect" upon American labor. Determination of annual admission quotas would be based on continuous monitoring of domestic labor markets, as well as adequate programs of training and relocating native workers.

An alternative device for regulating admissions might be the imposition of a "head tax" to be paid by employers for each TFW admitted, but this seems morally repugnant to many people, and would invite corruption, especially "kickbacks". In any case, the number of TFWs would presumably run below the present annual inflow of illegals, but would be large enough to preclude most of the illegal inflows by preempting their jobs.[7]

---

[6] According to offical reports of the U.S. Labor Department, by states and cities, unemployment rates for recent years in New York City, Buffalo, Jersey City, Philadephia etc. are almost double those for Austin, Dallas, Houston, Denver/Boulder, and about 50 percent higher than in Phoenix and Albuquerque, although the Northern rates are matched in a few Southwest border communities where the Mexican illegals first congregate; and unemployment rates in California are relatively closer to the Northeast rates. (*Unemployment and Training Report of the President*, 1979, Table D—8).

[7] Evidence that legal temporary worker programs can preempt the market for illegals, without severely damaging the market for native workers, can be drawn from both the

A TFW program along these lines would tend to minimize native resistance to mechanization and rationalization that may emerge in low-productivity work. The program would also ease the transition in industries that may be declining under the impact of cheaper imports, especially those admitted under the new tariff preferences (GSP) for products from developing countries. Externally, the programs might become an important and economical feature of our foreign aid. But the prime objective is for the authorized TFW admissions to absorb at least some if not all of the jobs now going to unauthorized aliens, and thus tend to restrict the present flood of illegal entries. To assure the returns of the TFWs at the end of their designated term of work here, cash deposits might be required — either at time of entry or by withholding from their earnings here — to be refunded at the time and place of exit from this country.

In exchange for an expanded, bilateral program of legal temporary admissions, with safeguards for human rights, the government of Mexico and other source countries might be willing to cooperate in stronger controls over the illegal movements on both sides of the border. Mexican President Lopez-Portillo indicated, in a semi-official way during President Carter's visit last February, a strong interest in some such arrangements.

If an active program for temporary workers were adopted, it would permit revision of the existing, rather arbitrary quotas on legal entries for settlement. The economic preference certification for resettlement could then be restricted to fields where a long-term shortage of workers is clearly demonstrable. Remaining admissions for settlement could then be made for family reasons and for refugee asylum, balanced against considerations of population increase, housing and social services, cultural conflicts, and other social issues of "capacity to absorb immigrants" in this country and elsewhere. The actual movement of authorized settlers and family members into jobs in specific locations would be explicitly taken into account in determining the need for any additional admissions under the temporary worker program.

U.S./Mexico *bracero* program of 1942—64 and the Western European "guestworker" programs since the 1950s.

For indications that the *bracero* program in the U.S. had little if any depressing effect on local wages, and actually impacted few American workers, and mainly displaced illegal entries from Mexico, *see*, Morgan and Gardner, "Lessons from the *Braceros*", paper at the University of Illinois Conference on Immigration Issues and Policies, April 1980.

In the case of Western Europen countries, which recruited and employed about 6 million foreign workers in the early 1970s, mostly at jobs rejected by native workers, it is estimated that only about 10 percent were illegals (W.R. Böhning in *International Labour Review*, July—August 1979, p. 402). However, since about 1975, when most of the receiving countries began to curtail official recruitment and to press for repatriation, there have been journalistic reports of rising illegal entries.

Enlarged Immigration Quotas (E.I.Q.)

Recognition of some operational programs and administrative difficulties of a TFW program has led some people to consider an alternative that seems simpler to administer and more in accord with liberal principles and free market practices. This is the enlargement of immigration quotas for settlement.

If we accept the economic argument used for TFWs, namely, that the U.S. economy has a need and capacity to absorb a certain number of additional workers of low-skill types to fill low-level job vacancies, then a corresponding admission of additional workers on a regular immigrant basis might serve to meet the economic need without imposing new types of regulations or invidious distinctions among classes of workers and their rights. These additional workers would then find their way to jobs, housing, social services, etc., like any other immigrants and indeed like any other persons, native or foreign.

Direct and simple as this proposal may seem, it raises serious problems of its own. In the first place, it is necessary to estimate the optimal number of persons to admit as additional workers to fill all genuine vacancies without generating unemployment of either the aliens or Americans. The number of such vacancies arising annually is surely at least several hundred thousand. The data for this purpose are deficient, yet an experimental or *tatonnement* approach, such as is offered by the TFW procedure, is difficult to operate under quotas which must be announced in advance, and sustained in relation to an excess of applicants who must go onto a waiting list. In the second place, the admission of immigrants entails their right to bring in their dependents over the next years. As the record indicates about 90—110 dependents following every 100 immigrants who declared their occupation, we must anticipate a total inflow of alien population of approximately double the number to be authorized for filling our job vacancies.

In the third place, as these persons become permanent additions to the U.S. population, there will be no means of adapting their numbers to changing needs of the U.S. economy, such as might result from seasonal changes, cyclical recession, or longer-run technologic shifts, inter-industry shifts, etc. In contrast, the TFWs come for one to three years, their scheduled returns are a source of flexibility, and their entry numbers too can be varied.

In the fourth place, the employers of the permanent immigrant workers would lose the nine percent payroll advantage they now get from the employment of illegals, namely, the omission of social security taxes and unemploment fund taxes, also the wage discount which some employers enjoy when they have illegal workers. To be sure, several studies have found that these omissions and differentials are neither universal nor very large, yet they would lead some employers to go on preferring illegal aliens. That is, the jobs now going to illegals would not be fully preempted by E.I.Q.s.

In the fifth *place, the applicability of the quota enlargement* raises political issues of invidious treatment. If the enlargement is directed solely at Mexicans, who are the great bulk of the present illegal entrants, then we must explain to other countries why they are not given parity treatment, and indeed why the U.S. is rewarding the largest group of alien lawbreakers with a legitimization of their behavior. To be sure, somewhat similar arguments could be used against the TFW program, but the latter does not offer permanent U.S. residence along with the possibility of obtaining U.S. citizenship. Furthermore, while the other countries might protest the concentration of the immigration enlargement program on Mexicans alone, the Mexican government might well protest the numbers to be admitted under this program as being no adequate substitute for the hundreds of thousands of Mexicans currently streaming across the U.S. border. Lacking such comparable numbers, the Mexican government may feel no strong incentive to cooperate in an E.I.Q. program. Whereas the TFW program can offer large numbers of admissions over the next few years, precisely because it is a temporary worker program, the E.I.Q. program would almost certainly set much smaller numbers because of the dependents issue, the permanence feature, and the inflexibility of the quotas.

Conclusion

In the last analysis, in order to deal with the twin labor market problems, job vacancies in particular fields and locations together with high and prolonged rates of aggregate unemployment, we need more fundamental policies than simply shutting off alien inflows and deporting the illegals already here. We need a general economic program for efficiency, growth and adequate employment, without inflation and without beggar-our-neighbor practices. In such a program, immigration policy should be integrated into a comprehensive manpower policy, which includes basic respect for human rights.

6

ADDRESS

CAROL BELLAMY*

THE writer and critic George Steiner once remarked that "Only trees have roots; people have legs, and are each other's guests". Steiner was a man subtly and profoundly conscious of his own Jewish heritage; he didn't mean to say that the strengths of our pasts should be cast aside. But his heritage taught him the imperatives of the refugee, the pilgrim, the seeker of a better life, and so he defended their right to commingle freely across political subdivisions and ethnic lines, to become one another's equals in common endeavors. It is a dream to which countless men and women have thrilled, and which has quickened the pens of many of our finest American women writers, from Emmas Lazarus and Goldman to Mary Antin.

Yet it is easy today for those of us responsible in some measure for the maintenance of political subdivisions to forget that dream. For there are other imperatives forced upon us by a nation which has yet to understand and provide for the special integrative functions which New York and other cities perform in its behalf.

New York City's special role and anomalous status came to it in two ways. First, as the nation's largest port of entry, New York naturally received the largest number of immigrants. Second, because New York City and the immigrants themselves responded so energetically to the challenges posed by the massive influx, an unprecedented network of human services was built and this in turn drew considerable internal migration from other parts of the country, particularly after World War II.

While this magnetism has truly been New York's glory, lately it seems to have become its curse. There are several reasons for that.

First, one might argue that business proved unwilling, or by the very nature of competitive investment, unable to sustain the quality and quantity of our human services through the high taxes they required. Other parts of the country which did not have the same burden, or which chose not to bear it, could make themselves more attractive.

---

*President, City Council, New York, N.Y.

Second, one can note that taxes have been high precisely because the rest of the nation, in planning its aid to New York, has been slow to recognize and accept some responsibility for the special needs the city has addressed.

Third, one must cite the seemingly intractable realities of racism and ethnic prejudice, which are in turn intensified by a fourth factor, the cultural and economic press toward white suburbanization encouraged by a booming postwar economy and by federal funding priorities — a dramatic demographic transformation which has left New York City with a disproportionately dependent population and a further erosion of the tax base.

Fifth, it is undoubtedly true that overspending, mismanagement and worse by city government contributed to a loss of faith in New York. When the cuts have gone about as far as they can, those who have labored to overcome the financial gimmicry of the past, who have laid off 65,000 of the city's workforce, who have uncovered inefficiencies and initiated innovations, will leave aside the self-laceration and recrimination of the past few years and begin to demand some new directions for our country. We will begin to ask what we can do to make good the promise which made this city and this nation an attraction for immigrants in the first place.

To begin with long range solutions, we have to try to affirm a principle which we are as yet unable to practice, namely that the solution to inflation, retrenchment, prejudice and exclusionary immigration policies lies not in cutting back the level of spending for human needs in places like New York until it meets some lower national average, but in bringing up the quality and level of services throughout the nation until it approximates what we have tried to achieve in New York.

The standardization of welfare benefits at adequate, equitable levels, and their assumption by the federal government, the rededication of investment to the creation of jobs which can replace welfare itself — these are demands which will plunge us in the years ahead into a debate about national priorities. They will force us to challenge disproportionate increases in military spending which so neglect economic development for human needs that in the long run we as a society become even more exclusionary and insecure. Without a change in national priorities, and the transcendence of parochialism necessary to achieve it, there is no hope for the centers in this country which have traditionally absorbed the immigrant with at least a chance for dignity and well-being. This debate requires enlightened participation.

Moving next to an intermediate range of goals, we must try to insure, even within the economic and political system as it is, that anomalies like New York are not unduly penalized for bearing the burdens they do.

The fact is that not only has the level of New York's human service delivery been higher than elsewhere, even adjusting for the higher cost of living; the proportion of the city's contribution to meeting it at the local level is greater than in most other places as well.

When federal reinbursement formulas are calculated state by state, New York's higher benefit levels are added right into per capita income, and then that seemingly higher per capita income is counted against the federal government's perception of our need! Put bluntly, New York is penalized for taxing its citizens to shoulder their own burdens.

The result is that, in Medicaid reimbursement, as an example, New York State receives fifty cents on the dollar from Washington, while some other states receive more than seventy cents. A good deal of my energy in public office has gone into documenting these inequities and pressing for their amelioration at both the federal and state level, where distribution inequities also occur. Were New York to show convincingly that both the need and contribution to meeting that need are greater — not just more bureaucratic or expensive — it could hope to regain a secure footing from which to enter the long-range national debate.

However, the immediate challenge is the fact that, precisely because of the climate of retrenchment and exclusion in our national life, we have a large population of immigrants who labor under the opprobrium of illegality. I need not dwell upon the element of shame and insecurity introduced into that population as a result, or upon the fact that in New York City alone that population numbers as many as one million. I would emphasize, however, that the approach of the decennial census without a resolution to this problem of outlaw status spells disaster for a city which depends upon a hundred categories of vital federal aid provided in part according to population count.

If the dubious efficacy of the Census Bureau's trial run in lower Manhattan last fall is repeated citywide, in which more than half the population failed to return the mail questionnaire and hence will have to be tracked down in person by ennumerators, New York may lose over $50 million in aid for services it is actually providing to hundreds of thousands of real people. The city may lose four or five Congressional seats, thereby losing some of its voice in the long-range debate about national priorities which must come, and in the intermediate call for more equitable reimbursement formulas. This is despite the likelihood that the city's real population is close to what it was when the 1970 census was taken.

Two courses of action come to mind. To prevent this, first, the census must be publicized to non-English-speaking communities. Regrettably the Census Bureau has not been forthcoming with multi-lingual instructions. Consequently, many who receive English language forms in the mail will fail to return them solely for want of comprehension. A concerted effort by the network of community groups will be of paramount importance. It means reaching into the poorest, least assimilated neighborhoods of this city through the contacts, credibility and information which only concerned people can provide.

Secondly, the Immigration and Naturalization Service has the capacity to influence the outcome of the census by the way it treats the city's illegals during the coming weeks. In a climate of fear intensified by sweeps and raids, all our assurances of the census data's confidentiality will be discredited. On the other hand, a policy of restraint by the INS would lessen the climate of fear and permit our assurances to remain at least partly credible.

In essence I have been suggesting here today that the problem of immigration to New York City is a political one. The challenges we face demand the full subtlety and critical perception of scholarship.

I believe such scholarship will show that unless we can replace scarcity and unemployment with a new set of national priorities, unless we can equalize the burdens of absorption and socialization which cities like New York carry so painfully, unless we can avoid the additional penalty and the addition of insult to unjury in a census undercount, we will deepen the nation's misperception and mistreatment of the immigrants New York City is struggling to serve.

The slide from badly-skewed national priorities to a deepening self-deception about the nature and needs of our immigrants is steep and swift. The City of New York by its very nature stands as a brake in that slide. With help, it will remain true to the dream that people may continue to be one another's guests, as indeed we are one another's guests today.

7

Needed Revision of Grounds of Exclusion: Marijuana, Communists, Homosexuals, and Polygamists

SAM BERNSEN*

THERE are thirty-three grounds for exclusion enumerated in the Immigration Laws. This discussion deals with four: marijuana, communism, homosexuality and polygamy.

Marijuana

Until 1960, the exclusion grounds [1] relating to illicit trafic in, and possession of, narcotics did not include marijuana violations. Despite the broad sweep of the statute, it was strictly construed by the courts as being limited to narcotics and as not including marijuana. [2] The act of July 14, 1960 expressly added illegal marijuana trafficking and possession. There is little question that the Congress acted to overcome the judicial interpretation. According to the legislative history the reason for adding marijuana was that it was believed to lead to violent acts and be a forerunner of dangerous and more addiction forming narcotics. This belief has been found to be without basis by the National Commission on Marijuana and Drug Abuse, an official government body.

Unlike convictions for crimes involving moral turpitude, a waiver on the basis of relationship to a U.S. citizen or a permanent resident alien is not available to a narcotics violator. Nor will a pardon or a favorable judicial recommendation save the alien in a narcotics case. The fact that it may have been the alien's sole offense and may have occurred many years ago will not lift the bar. The waivers that are available are of limited utility. For example a waiver is available to a narcotics violator if he is a returning lawful permanent resident alien with a seven year domicile in the U.S. and if he qualifies and obtains favorable discretionary action under Section 212 (c) of the Immigration and Nationality Act. Suspension of deportation and voluntary departure are available only if the alien has had ten years continuous physical presence in the United States.

---

* Former General Counsel of the Immigration and Naturalization Service: now engaged in private law practice in Washington, D.C. with the firm of Fried, Fragomen, Del Rey, Bernsen & O'Rourke, and serves as adjunct Professor of Law at Catholic University.

[1] Sec. 212 (a) (23), INA.

[2] Hoy v. Mendoza-Rivera, 267 F.2nd 451, 1959: *Hoy v. Rojas-Gutierrez*, 267 F.2nd 490, 1959.

Because of the severity of the statute, the courts and the Immigration and Naturalization Service strain to avoid unconscionable results. In the well-known Lennon case the court held that conviction for possession does not bar the alien unless the law under which the alien was convicted required knowing or guilty possession. [3] In another narcotics case, apparently to avoid the harsh consequences of the statute, the court held that an alien is not barred from Section 212 (c) which is literally available only to an alien returning to a seven year domicile, even if he has never departed from the United States. [4] The Board of Immigration Appeals has adopted this position. [5] One court characterized deportation for a minor marijuana violation as cruel and unusual punishment, [6] despite the well established principle that deportation is not punishment and that deportation is a civil and not a criminal proceeding. The U.S. Circuit Court of Appeals, however, reversed without opinion. [7]

At the administration level, INS has felt the need to adopt the policy of not initiating deportation proceedings without prior approval of a Regional Commissioner in the case of a lawful permanent resident convicted of a single offense of possession, importation or distribution of less than 100 grams of marijuana for no remuneration. [8]

Clearly the exclusion ground for marijuana violations is needlessly inflexible.It ignores the quality of marijuana involved, the alien's past record, circumstances of the violation, family relationships, judicial recommendations and pardons. Even murder is not dealt with so harshly under the Immigration Laws. The federal government and many state governments have recognized the need for flexibility in the interest of rehabilitation by enacting expungement statutes for youthful and first offenders. [9]

---

[3] *Lennon v. INS*, 527 F.2nd 187, 1975.

[4] *Francis v. INS*, 532 F.2nd 268, 1976.

[5] *Matter of Silva*, Int. Dec. 2532.

[6] *Lieggi v. INS*, 389 F. Supp. 12, 1979.

[7] *Lieggi v. INS*, 529 F.2nd 530, 1976: *See, Oliver v. U.S. Department of Justice*, 517 F.2nd 426, 1975.

[8] O.I. 242.1 (a) (28).

[9] *Mestre-Morera v. INS*, 462 F.2nd 1030, 1972: *Matter of Zingis*, Int. Dec. 2270, 1974.: *Matter of Andrade*, 14 I&N Dec. 651, 1974: *Matter of Werk*, Int. Dec.

Reprehensible as illicit narcotics traffic is, fundamental elements of humanitarianism and equitable considerations should not be ignored. The law should be changed to allow narcotics violators to obtain the same relief that is available to persons convicted of the most serious crimes involving moral turpitude. In addition, a single conviction for possession, distribution or importation of less than 100 grams of marijuana should not be an excludable offense. Similarly an alien should not be subject to mandatory exclusion for a single narcotics violation committed under age 18, or over seven years ago, if in the exercise of discretion his admission is warranted.

Communists

The ban against admission of communists had its origin in a 1903 Act barring anarchists.[10] This Act resulted from the assassination of President McKinley. In time the law was expanded to include both the exclusion and expulsion of members or affiliates of organizations devoted to the forcible overthrow of the Government of the United States.[11] When the Supreme Court ruled that the law did not reach past members,[12] Congress lost little time in enacting an amendment to expressly include them.[13] Nevertheless it was still necessary for the government to prove that the Communist Party advocated the forcible overthrow of the United States Government. The Internal Security Act of 1950 (Section 22) eliminated this problem by expressly naming the Communist Party and making membership at any time a ground for exclusion. This concept was continued in the current law contained in the Immigration and Nationality Act of 1952.[14]

The present statute provides for the exclusion of subversives in paragraphs (27), (28) and (29) of Section 212 (a). Paragraph (27) is couched in terms of aliens seeking to enter the United States to engage in activities prejudicial to the United States. In paragraph (29) the bar is aimed at those who, after entry, "probably would" engage in espionage, sabotage, public disorder or other activity subversive to the national interest or would engage in an activity involving overthrow of the United States Government by force or violence.

The meaning of the terms "prejudicial" and "subversive" are extraordinarily imprecise. Three decades later they still perplex the most experienced officials in the Immigration Service and the State Department. The Foreign Affairs

---

[10] Act of March 3, 1903.

[11] Sec. 19, Immigration Act of 1917: Anarchist Act of 1918.

[12] *Kessler v. Strecker*, 307 US22, 1939.

[13] Alien Registration Act of 1940.

[14] Sec. 212 (a) (28).

Manual of the Department of State gives four examples in which the "prejudicial" entry provision of paragraph (27) would be applicable.

1) Aliens who, while in the United States, might engage in political or conspiratorial activities against the United States or foreign governments.
2) *Aliens who are known or believed to be members of terrorist* organizations engaging in activities such as political kidnapping, hijacking and extortion.
3) Aliens who are known or believed to be operatives of underworld criminal organizations.
4) Aliens who are notorious for allegedly engaging in excesses, including physical brutality, while in political power in their native land or who were prominently identified with any former regime which did so.

The following are examples of paragraph (29) situations in the State Department's Foreign Affairs Manual:

1) Aliens known or believed to be a potential threat to the personal safety of persons protected by the United States Secret Service.
2) Aliens known or believed to be engaging in a general or specific intelligence mission against the United States.

The State Department clearly expressed its concern about the "catch-all" nature of paragraphs (27) and (29) by requiring that all visa applications involving inadmissibility under these paragraphs be referred by consuls to the Department of State for an advisory opinion.

Paragraph (28) spells out 8 categories of inadmissibility if an alien belonged to one of those categories at any time. These include: 1) anarchists; 2) advocates or affiliates of organizations that advocate opposition to all organized government; 3) members or affiliates of the Communist Party of the United States or of any foreign state or of any other totalitarian party of the United States or of any foreign state; 4) aliens who advocate the doctrines of world communism or the establishment in the United States of a totalitarian state; 5) members or affiliates of any organization required to be registered under the Subversive Activities Control Act of 1950;[15] 6) advocates or members or affiliates of any organization that advocates overthrow by force or violence of the Government of the United States or of all forms of law or that advocates the unlawful assault or killing of officers of the United States Government or any other organized government or advocates the unlawful damage or destruction of property; 7) aliens who write, publish, circulate or display matter advocating these activities; 8) aliens who are members or affiliates of any organization that writes, publishes, circulates or displays such matter.

---

[15] This provision was repealed by the Act of Jan. 2, 1968.

However, an alien who is inadmissible because of membership or affiliation in a prescribed organization may be admitted if his membership or affiliation was involuntary or was or is under the age of 16, by operation of law or for the purpose of obtaining employment, food or other essentials of living. [16]

In addition, a former member may be admitted if, since the termination of membership, he has been for at least 5 years prior to the date of visa application actively opposed to the doctrines of the organization. [17] These aliens are usually referred to as defectors.

An alien who is inadmissible under paragraph (27), (28), or (29) may be excluded without a hearing if the Attorney General concludes the alien is excludable on the basis of confidential information and that the disclosure of the information would be prejudicial to the United States Government. [18]

Aliens inadmissible under paragraph (28) may be admitted at the discretion of the Attorney General for a temporary period notwithstanding their inadmissibility. [19] The pertinent facts in each such case must be reported to the Congress. [20]

Paragraphs (27) and (29) should be consolidated and clarified to plainly state that an alien shall be inadmissible if there is reason to believe that he seeks to enter the United States to engage in any activity which would be a criminal offense under any law of the United States. This concept would pick up the illegal conspiracy and espionage examples in the State Department's Foreign Affairs Manual. Specific language should also be added to include the State Department examples relating to terrorism, organized crime, torture and suspected assassins.

The membership provisions of paragraph (28) should be limited to meaningful membership in accordance with Supreme Court decisions. [21] Moreover, the membership should be in a significant capacity. Thus a mere nominal member, whose sole participation consisted of paying dues and attending meetings, would not be barred. There is no reason to believe that innocuous former members who were never dedicated communists are a menace to this country. On the other hand those who were active as officers or in leadership roles, or who had achieved prominence as members would continue to be inadmissible. This would make it unnecessary to contend with questions of involuntary membership.

---

[16] Sec. 212 (a) (28) (I) (i), INA.

[17] Sec. 212 (a) (28) (I) (ii), INA.

[18] Sec. 235 (c), INA.

[19] Sec. 212 (d) (3), INA.

[20] Sec. 212 (d) (6), INA.

[21] *Galvan v. Press*, 347 US 522, 1954; *Rowoldt v. Perfetto*, 355 US 115, 1957; *Gastelum-Quinones v. Kennedy*, 374 US 469, 1963.

The forgiveness concept for those who had terminated membership for at least 5 years should be retained but without the active opposition requirement. Practical experience has demonstrated that the active opposition requirement is illusory. Many aliens simply are not in a position to actively oppose communist doctrines and do not have the ability to undertake such opposition. To attempt to comply with the law in these situations, a former member usually submits affidavits from friends, relatives or associates stating that in private conversations he expressed his opposition. These affidavits are generally accepted. The statute should be changed accordingly.

Homosexuals

Regardless of family relationship, length of United States residence or other humanitarian factors, the law sternly forbids the entry or re-entry of aliens afflicted with psychopathic personality, or sexual deviation, or a mental defect.[22]

The term "psychopathic personality" was introduced into the Immigration and Nationality Act of 1952 as a substitute for "constitutional psychopathic inferiority", which has been severely criticized as ambiguous. According to the legislative history of the 1952 Act,[23] the Senate Judiciary Committee believed that the new language would more adequately serve the purpose of the law and that the classes of mental defectives should be enlarged to include homosexuals and other sex perverts. The new language was also criticized for vagueness. To remove any doubt the law was amended in 1965 by expressly adding the term "sexual deviation".[24] In 1967, the Supreme Court held that Congress used "psychopathic personality" not in the clinical sense but to effectuate its purpose to exclude from entry all homosexuals and other sex perverts.[25] The term "homosexual" does not appear in the statute.

The law specifies that the physical and mental examination of arriving aliens shall be made by medical officers of the United States Public Health Service (USPHS).[26] These officers are also directed to certify for the information of immigration officials any physical and mental defects observed. USPHS officers with special training in insanity and mental defects are to be employed and provided with suitable facilities for examination of arriving aliens who may be excludable under any of the first five paragraphs of the exclusion section.[27] "Psychopathic personality" appears in the fourth paragraph. A certified alien is given the right to appeal to a Board of USPHS medical officers.

---

[22] Sec. 212 (a) (4), Immigration and Nationality Act of June 24, 1952.

[23] Senate Report 1515, 81st Cong. 2nd sess., pp.337–345.

[24] Act of October 3, 1965; H.Rpt. 745, 89th Cong., 1st sess., p. 16.

[25] *Boutillier v. INS*, 387 US 118, 1967.

[26] Sec. 234, INA.

The certification issued by a medical officer or the Board is binding on the immigration judge hearing the case in exclusion proceedings.[28]

On August 2, 1979, the USPHS issued a memorandum declaring that homosexuality *per se* will no longer be considered a "mental disease or defect".[29] Two reasons were given. First, this would reflect current medical practice with respect to homosexuality inasmuch as the American Psychiatric Association does not consider homosexuality to be a mental disorder. Second, the determination of homosexuality is not made through a medical diagnostic procedure. Accordingly, USPHS medical officers will no longer certify that homosexuality *per se* is a mental disease or defect. As only medical officers of the USPHS are authorized to certify that an alien is afflicted with psychopathic personality, and the alien so certified has a right to appeal to a medical board, it would appear that the action of the USPHS made the "psychopathic personality" exclusion ground inoperative with respect to homosexuals.

Nevertheless, the Assistant Attorney General of the Justice Department's Office of Legal Counsel in a memorandum dated December 10, 1979, informed INS that it is required to enforce the exclusionary provisions relating to homosexuals. He recognized that the absence of USPHS from the process poses practical problems and that the term "homosexuality" is "highly imprecise". Therefore, he believed that INS should promulgate a uniform policy for investigating suspected homosexuality of arriving aliens, including the extent to which examining officers are to rely on the representations of the aliens themselves and particular questions, if any, that officers may ask concerning specific conduct. In view of the problems this would pose for INS, the Assistant Attorney General recommended that the matter be brought to the attention of the Congress. He did not indicate what action the Congress should take.

The *New York Times*, in an editorial dated January 4, 1980, urged the Administration to "seek repeal of the homosexual law" and expressed the view that this provision involves crude intrusions into the private lives of foreign nationals. The editorial also noted that the medical profession has increasingly disputed Congress's view that an unconventional sexual preference is a sickness.

---

[27] *Id.*

[28] Sec. 236 (d), INA.

[29] Memo of USPHS dated Aug. 2, 1979.

In at least two naturalization cases within the past ten years, the Courts have found that homosexuality does not preclude a finding of good moral character.[30] The test applied by one court was whether the conduct had been public or private; if private it was not the proper concern of the naturalization law even though there was a sodomy statute in the state involved. The other court held that good moral character was not the same as behavior which conforms to the preference of the majority. It noted that the community was tolerent, if not indifferent, to homosexual behavior.

Not only are some homosexuals being admitted to citizenship through naturalization; they are also qualified for U.S. Government employment.[31] If we are beginning to accept homosexuals for citizenship and federal jobs, can it be said that they should be excluded from admission into the United States solely because of their homosexuality? Undoubtedly the Congress will consider these aspects when the question is debated.

Polygamists

Section 212 (a) (11) of the Immigration and Nationality Act excludes from admission into the United States "aliens who are polygamists or who practice polygamy or advocate the practice of pologamy".

Polygamists have been inadmissible to the United States since 1891.[32] Although the Immigration Commission of 1907—11 included in its report a complete account of the problems raised by the immigration of women for immoral purposes, there was no discussion of polygamists.[33] The legislative history of the Immigration Act of 1917 states that the words "polygamists and polygamy" refer to the historical custom and religious practice which the Mormons had typified.[34]

In a Supreme Court decision of 1879 it is stated: "Polygamy has always been odious among the northern and western nations of Europe and until the establishment of the Mormon Church was almost exclusively a feature of the life of Asiatic and African people...from the earliest history of England, polygamy has been treated as an offense against society". The Supreme Court expressed the view that in the face of this evidence it is impossible to believe that the constitutional guarantee of religious freedom was intended to prohibit legislation in respect to this most important feature of social life. With respect to those who make polygamy a part of their religion, the court stated that laws are made for the government of actions and while the laws cannot interfere with religious beliefs and opinions, they may with practices.[35]

---

[30] *In re Labady*, 326 F. Supp. 924, USDC, SDNY; 1971. *In re Brody*, 394 F. Supp. 1208 USDC Oregon, 1975.

[31] 5 USC 2302 (b) (10).

[32] Act of March 3, 1891.

[33] Senate Doc. No. 747, 61st Cong., 3d sess., Vol. II. Pp. 320—350.

[34] Congressional Record Volume 52, pt. 1. Pp. 801—811.

On the basis of this Supreme Court decision, the Board of Immigration Appeals expressed the view that in order to sustain an exclusive charge of polygamy it must be shown that an alien subscribes to the historical custom or religious practice called polygamy and that it is not sufficient that an alien has more than one spouse at a time.[36]

Regulations of the State Department provide: "An alien who is a member of a religious organization which tolerates polygamy is not ineligible to receive an immigrant visa under the provisions of Section 212 (a) (11) of the Act unless such alien is a polygamist, or unless he practices or advocates the practice of polygamy".[37]

The statute defines the term "advocates" to include "admits belief in".[38]

The bar against the admission of polygamists does not apply to an alien, who in good faith, is seeking to enter the United States as a nonimmigrant.[39] Apparently the Congressional view was that they could be tolerated on a temporary basis.

Plural marriages are contrary to the public policy of all the states. But it is the practice which is condemned, not the belief. The test for admission should be whether the alien will practice polygamy in the United States. The rationale for barring admission of an alien who would be in violation of the criminal law by practicing polygamy is clear. It is not at all clear that the bar should be invoked against aliens who do not intend to violate our laws by engaging in the practice of polygamy in the United States.

The immigration statute should be revised accordingly.

---

[35] Reynolds v. U.S., 98 US 145, 1979.

[36] *Matter of G.* 6 I&N Dec. 9, 1953.

[37] 22 CFR 42.91 (a) (11).

[38] Sec. 212 (d) (1), INA.

[39] Sec. 101 (a) (2), INA.

8

Grounds of Deportation: Statute of Limitations and Clarification of the Nature of Deportation

MAURICE A. ROBERTS*

FOLLOWING the end of World War II, during the developing period of the Cold War, as part of a program to drive Communists from positions of power in the U.S. the Department of Justice intensified its campaign to deport alien Communists. The undertaking was soon frustrated by a number of stumbling blocks. For one thing, the deportation statute then made no reference to Communists or Communist Party members, as such. It provided only for the deportation of alienswho personally advocated, or belonged to an organization that advocated, the violent overthrow of our government. In the wake of the Supreme Court's analysisof the Communist Party in *Schneiderman v. United States*, 320 US 118,1943, the lower courts refused to take judicial notice that the Communist Party was within the statutory proscription. Thus, the nature of the Communist Party had to be proved in every deportation proceeding based on that ground. This turned out to be a costly and time consuming process, resulting in the production of former Communist Party members to authenticate and testify as experts on the voluminous literature of the Party. In desperation, the Department sought legislative relief, and the deportation statute was ultimately amended to its present form, which specifically names the Communist Party, among others, as a proscribed organization.

During the period when new legislation was being contemplated in the Department,we in the INS who were involved in the program were asked for suggestions. To avoid the possibility that a statute specifically singling out the Communist Party might be vulnerable as a bill of attainder, someone came forward with the suggestion that the statute be amended to provide for the deportation of all aliens, with relief from deportation available in the exercise of administrative discretion. In that way, went the suggestion, we could legally proceed against all alien Communists merely as aliens, without the burden of having to prove their own individual membership and the proscribed nature of the Party. Naturally, discretionary relief from deportation would not be granted to them.

---

* Editor, *Interpreter Releases*. Former Chairperson, Board of Immigration Appeals, U.S. Department of Justice.

Of course, nothing came of this suggestion. I mention it because it illustrates not only what excesses can be contemplated in time of crisis, in reliance on the plenary power of Congress in this area, but also what direction our immigration laws have taken. Responding to periodic tensions, Congress has, from time to time, added fresh groups of aliens to the excludable and deportable classes, followed some time later by additional avenues of discretionary relief as new hardships were exposed by the over-broad new restrictions. None of the new restrictions, however, is ever repealed. Thus we are rapidly approaching the situation where much of the Department's resources are being devoted to the institution of deportation proceedings against aliens who ultimately receive relief from deportation in the exercise of Departmental discretion. It is high time that we paused and examined this revolving door system, to see if a less wasteful set of principles will not as effectively promote our national well being, while at the same time eliminating the traumatic effects on aliens needlessly confronted with deportation proceedings.

THE NATURE OF DEPORTATION

Some Underlying Fallacies

The trend of our immigration laws, both legislatively, administratively and in the courts, has been influenced by a number of generalizations which have developed in the courts through the years and which have by now become so heavily encrusted as to achieve the status of axioms, defying attempts at rational opposition. If we were writing on a clean slate, mused Mr. Justice Frankfurter, we might reach another conclusion.[1]

In the field of immigration law, myths, fictions and contrivances abound. The fictions which the common law resorted to in order to fashion new remedies, the casual ejector, the fictitious losing and finding underlying the action for trover, must yield in ingenuity to the modern day mythology contrived to facilitate effective immigration law enforcement. An alien physically present in the U.S. for many years, for example, is regarded as not here at all if he gained entry by the lawful exercise of parole.[2] An annulment decree, given *ab initio* effect on the "relation back" theory, has been held to undermine not only the marriage but also the alien's permanent resident status that followed.[3] Such fictions can and do result in hardship and injustice in individual cases. But they are as nothing compared to two generalizations which sprang up at an early date and which have had a pervasive effect on all thinking on the subject since. These generalizations, which I classify as myths because of their failure to relate to the real world, are 1) that deportation is not a criminal punishment and is, therefore, not a penalty;[4] and 2) that deportation procedures are, therefore, civil proceedings.[5]

---

[1] *Galvan v. Press*. 347 US 522, 530-2, 1954.

[2] *Leng May Ma v. Barber*, 357 US 185, 1958; *Yuen Sang Low v. Attorney General*, 479 F.2d 820, 9th Cir. 1973, cert. denied 414 US 1039.

[3] *Matter of Samedi*, 14 I&N Dec. 625, BIA 1974.

Important consequences flow from these generalizations. If deportation is not a criminal sanction, then a number of constitutional limitations on the power of the federal government in defining and punishing crime do not apply. It has been held that the *ex post facto* provision does not limit deportation legislation, and laws have been sustained which render an alien deportable for past conduct which was not a ground for deportation when it occurred.[6] For the same reason it has been held that the free speech,[7] bill of attainder,[8] and cruel and unusual punishment[9] limitations do not apply.

Corollary to these conclusions has been the view that in legislating on the exclusion and deportation of aliens, Congress is exercising the power of the United States in the field of foreign relations, and that its legislative judgments in this regard are immune from judicial review.[10] In times of crisis, not only is there a tendency on the part of the courts to sustain the legislative enactments of Congress, but also the administrative legislation promulgated in the form of regulations. Thus, during the post-World War II period of tension, the courts sustained administrative regulations excluding an entrant alien without a hearing.[11] More recently, in the wake of the Iranian seizure of U.S. diplomatic personnel as hostages, a court has sustained regulations singling out Iranian students for deportation on the basis of their national origin as a valid exercise by the President of his foreign affairs power.[12]

It is true that, in the proceedings to determine whether an alien is within any of the deportable classes, the courts have, since early times, insisted on the observance of procedural due process.[13] The alien against whom deportation proceedings have been brought is entitled to a hearing which accords with current standards of due process, [14] *i.e.*, notice of charges, opportunity to be heard, right to be represented by counsel, right to confront and respond to INS evidence, etc. Indeed, these safeguards are now written into Section 242 (b) of the Immigration and Nationality Act and conform to the requirements generally prescribed by the Administrative Procedure Act.[15] However, since it has been held that deportation proceedings are only civil in nature and not subject to the restrictions laid down in the Constitution with respect to criminal prosecutions, an alien who has to defend himself against deportation charges lacks certain practical benefits which would accrue to him in a criminal prosecution. For one thing, if he is indigent and cannot afford to pay for the effective assistance of counsel, which may be essential if the right to representation is to be meaningful, he is not entitled to assigned counsel. [16] Only recently the Board of Immigration Appeals ruled that evidence obtained by an unreasonable search and seizure in violation of an alien's rights under the Fourth Amendment may be used against him in deportation proceedings on the theory that the exclusionary rule does not apply in deportation proceedings because they are civil in nature. [17]

---

[4] *Bugajewitz v. Adams*, 228 US 585, 1913.

[5] *Harisiades v. Shaughnessy*, 342 US 580, 1952.

[6] *Id. Galvan v. Press*, 347 US 522, 1954; *Marcello v. Bonds*, 349 US 302, 1955.

[7] *Turner v. Williams, 194 US 279, 1904; Kleindienst v. Mandel*, 408 US 753, 1972.

[8] *MacKay v. McAlexander*, 268 F.2d 35 9th Cir. 1959; cert. denied 362 US 961.

[9] *Fong Yue Ting v. U.S.*, 149 US 698, 1898; *LeTourneur v. INS*, 538 F.2d 1368, 9th Cir. 1976.

[10] *Fong Yue Ting v. U.S.*, 149 US 698, 1893; *Oceanic Steam Nav. Co. v. Stranahan*, 214 US 320, 1909; *Kleindienst v. Mandel*, 408 US 753, 1972.

[11] *Knauff v. Shaughnessy*, 338 US 537, 1950.

[12] *Narenji v. Civiletti*, ___F.2d___D.C. Cir., Nos. 79-2460, 2461, Dec. 27, 1979, rehearing and suggestion for rehearing *en banc* denied January 31, 1980.

[13] *The Japanese Immigrant Case*, 189 US 86, 1903.

A brief overview of the development of our exclusion and deportation laws will show that these generalizations, if ever valid, are valid no longer.

Development of Our Exclusion and Deportation Laws

During the first hundred years of our existence as a nation, there was little legislation affecting immigration. The Alien Act of 1798, which authorized the President to require the departure of any alien be deemed dangerous, was never enforced and it expired at the end of its two year term. It was 1875 before Congress passed the first exclusion statute, barring convicts and prostitutes from admission. [18] The first general immigration statute came in 1882. It imposed a head tax of 50 cents on immigrants and it excluded idiots, lunatics, convicts and aliens likely to become a public charge. [19] In 1882 also came the infamous Chinese Exclusion Act, [20] followed in 1885 and 1887 by the laws excluding contract laborers. [21] It should be noted that these were all exclusion provisions. The first actual deportation statute since 1798 came in 1888, with an amendment that allowed the expulsion, within one year, of aliens who had entered in violation of the contract labor laws.[22] The same pattern was followed in the ensuing years, with Congress setting up additional classes of excludable aliens and providing for the expulsion, within one year, of those who managed to enter in violation of law. The period of limitation on the deportation of excludable aliens was later extended, first to three years and then to five years. Thus, in this early period, the deportation process was merely an adjunct of the exclusion process and deportation actually constituted only delayed exclusion. The presence of a relatively brief statute of limitations insured against hardship to excludable aliens who had established deep roots here by the time their improper admission was discovered. During this period, it was correct for the courts to say that what was actually involved was the power of Congress to control immigration and that deportation was not a penalty but was merely the enforcement of the Congressional policy of excluding undesirable aliens.

---

[14] *Wong Yang Sung v. McGrath*, 339 US 33, 1950.

[15] *Marcello v. Bonds*, 349 US 302, 1955.

[16] *Barthold v. INS*, 517 F.2d 689, 5th Cir. 1975; *Ramirez v. INS*, 550 F.2d 560, 9th Cir. 1977.

[17] *Matter of Sandoval*, Int. Dec. 2725 BIA 1979.

[18] Act of March 3, 1875, 18 Stat. 477.

[19] Act of August 7, 1882, 22 Stat. 214.

[20] Act of May 6, 1882, 22 Stat. 58.

[21] Act of Feb. 26, 1885, 23 Stat. 332; Act of February 23, 1887, 24 Stat. 414.

This situation changed drastically in 1910 with the enactment of the first statute providing for the deportation of aliens on the basis of their post-entry conduct in the United States. That statute was aimed at aliens identified with prostitution.[23] In thus imposing deportation on aliens who had entered lawfully, but who had thereafter misbehaved here, Congress was in effect punishing them for such misbehavior.

The course of succeeding legislation followed the same pattern. The grounds for exclusion proliferated, thereby expanding the classes of aliens deportable for improper entry, and additional types of post-entry conduct were made cause for deportation. Starting in 1917, aliens involved in post-entry activities deemed subversive were made deportable without time limitation. With the advent of the 1952 Act all statutes of limitation on deportation were eliminated and the deportation provisions were specifically made retroactive.

To meet the hardships that inevitably ensued from such an increase in the number of deportable aliens, many with deep roots and close family ties here, various forms of discretionary relief from deportation were evolved, first by administrative grace and later by statutory authority. In the 1930s voluntary departure grew up as an administrative remedy, often coupled with the ingenious device of pre-examination. Neither had statutory sanction. It was not until 1940 that Congress first authorized the grant of voluntary departure and created the remedy of suspension of deportation. Other statutory remedies, such as adjustment of status, registry as a cure for deportability and waivers of various grounds of inadmissibility followed in later years. Many of the remedies have built-in time periods of five to ten years, during which the alien must prove he has resided here continuously and been a person of good moral character.

---

[22] Act of Oct. 19, 1888, 25 Stat. 566.

[23] Act of March 26, 1910, 36 Stat. 263.

As matters now stand, deportation statutes have developed into a highly technical and utterly confusing complex of provisions that only a highly skilled attorney can confront with any degree of confidence. They provide for both the delayed exclusion of aliens inadmissible at entry and the punitive expulsion of aliens regularly admitted, for post-entry misbehavior. Most aliens in deportation proceedings concede deportability and apply for some form of relief from deportation. The latter are complex and are made even more difficult by the negative definition of good moral character imposed by Congress in Section 101 (f) of the present Act, which can result in preclusion of a finding of good moral character on the basis of conduct in one state that would not have that effect in another.[24]

Whatever else may be said, it is certainly no longer generally true that deportation is merely a protective measure to rid the United States of aliens Congress deems undesirable, who in any event, are only being sent back to their countries of origin and allegiance. This notion may still have some validity whereby the alien involved is a recent entrant who came in surreptitiously or was admitted temporarily as a nonimmigrant and violated the conditions of his admission. It can hardly be applied in any realistic sense to an alien who has been here for many years, who has established roots here, and whose deportation will separate him from his home and family and deprive him "of all that makes life worth living".[25] Although the deportation of such an alien is not literally imprisonment, so that the deportation proceeding itself is not technically a criminal prosecution, the consequences to the alien may be far more devastating than a short jail term or other criminal penalty.

And where the basis for the deportation is the alien's conduct in this country following his lawful admission for permanent residence, the notion that deportation does not involve a penalty fails utterly. True, in the deportation proceedings the alien is not being indicted, tried and sentenced for a crime. But in its effect, "It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty".[26] The realistic acknowledgement that in such a situation deportation involves punishment would bring into play a number of the constitutional safeguards applicable to criminal punishment. The courts, however, have thus far refused to recede from their earlier views and continue to regard deportation as a purely civil proceeding.

---

[24] *Matter of Cienfuegos*. Int. Dec. 2746, BIA 1979.

[25] *Ng Fung Ho v. White*, 259 US 276, 284, 1922.

[26] *Douglas, J.*, in *Fong Haw Tan v. Phelan*, 333 US 6, 10, 1948.

THE GROUNDS OF DEPORTATION

The present statute, the Immigration and Nationality Act of 1952, as amended (hereinafter INA), contains 33 grounds for exclusion [27] and 19 grounds for deportation, [28] many subdivided into additional excludable and deportable classes. It has been estimated that there are now over 700 different grounds for deportation. This should hardly be surprising, for the first ground for deportation alone, and the one most frequently used encompasses all the classes of aliens inadmissible at entry. [29]

For purposes of convenience, various of the grounds for deportation can be grouped together:

Violation of Entry Requirements or Conditions

1) Section 241 (a) (1) provides for the deportation of any alien who was inadmissible by the law existing at the time of his entry. This is the classical deferred exclusion provision. An exception is carved out in favor of an alien who was inadmissible for fraud at entry but was then otherwise admissible and is now closely related to a U.S. citizen or permanent resident alien. This exemption is mandatory and does not depend on the favorable exercise of administrative discretion. Bills are pending which would render this exemption purely discretionary or repeal it altogether.
2) Section 241 (a) (2) provides for the deportation of aliens who entered the U.S. without inspection or at an undesignated time or place or are in the U.S. in violation of law. The latter is a catch-all provision and is used for aliens who entered lawfully as nonimmigrants and remained longer than permitted.
3) Section 241 (a) (9) provides for deportation of an alien who entered as a nonimmigrant and failed to maintain his nonimmigrant status, *e.g.*, worked without permission.
4) Section 241 (a) (10) provides for the deportation of an alien who entered from foreign contiguous territory, where he arrived on a nonsignatory carrier.
5) Section 241 (c) creates a rebuttable presumption of marital fraud which undermines the validity of the visa used at entry where the marriage is judicially terminated within two years after entry.

Subversives

1) Section 241 (a) (6) provides for the deportation of anarchists or

---

[27] *See*, 212 (a), INA.

[28] *See*, 241 (a), INA.

[29] *See*, 241 (a) (1), INA.

members of proscribed organizations, including the Communist Party. It is now seldom used, since judicial construction requires a showing that the membership was meaningful.

2) Section 241 (a) (7) provides for the deportation of aliens who knowingly engage in subversive or espionage activities.

3) Section 241 (a) (19) provides for the deportation of aliens who participated in the persecution of others during the Nazi regime in Germany.

Crimes Involving Moral Turpitude

1) Section 241 (a) (4) provides for the deportation of an alien convicted of a crime involving moral turpitude committed within 5 years after entry and sentenced to confinement for a year or more; or convicted at any time after entry of two such crimes not arising out of a single scheme of criminal misconduct.

2) Section 241 (b) saves from deportation such a convicted alien who receives an executive pardon or in whose case the sentencing court makes a timely recommendation against deportation.

Narcotics Violators

1) Section 241 (a) (11) provides for the deportation of aliens who are narcotic drug addicts or have been at any time convicted of a narcotics law violation.

2) Section 212 (c) provides a discretionary waiver of inadmissibility for an alien inadmissible on drug charges who is returning to an unrelinquished lawful domicile of seven years in the U.S. The courts are divided on whether comparable relief from deportation is also available under Section 212 (c) to such an alien who has not left the U.S.

Smugglers of Aliens

1) Section 241 (a) (13) provides for the deportation of any alien who before, at the time of, or within five years after entry knowingly and for gain assisted another alien to enter the U.S. in violation of law. No conviction is necessary. No form of discretionary relief from deportation is available for an alien deportable on this ground.

Immoral Aliens

1) Section 241 (a) (12) provides for the deportation of aliens who at any time after entry become prostitutes or pimps.

Convictions of Other Crimes

Deportation is prescribed for the following other convictions:

1) Section 241 (a) (5): Alien Registration Act and other violations.
2) Section 241 (a) (14): sawed off shotgun.
3) Section 241 (a) (15): Smith Act conviction within five years of entry.
4) Section 241 (a) (16): More than one Smith Act conviction, at any time after entry.
5) Section 241 (a) (17): Conviction of certain wartime offenses.
6) Section 241 (a) (18): Conviction of importing an alien for immoral purposes.

Receiving Public Assistance

1) Section 241 (a) (3) provides for the deportation of an alien who is within five years after entry institutionalized at public expense because of mental disease, unless he shows that the disease did not exist prior to entry.
2) Section 241 (a) (8) provides for the deportation of an alien who within five years after entry becomes a public charge not affirmatively shown to have arisen after entry.
3) Under administrative construction, an alien does not become a public charge unless the state law requires repayment and a demand for repayment has not been met.
4) Pending bills would eliminate the need for repayment before the public charge provision would apply.

A STATUTE OF LIMITATIONS

As we have seen, the 1952 legislation not only repealed all remaining statutes of limitations, but did so retroactively. The retroactive application of the new provisions, which have the effect of rendering deportable aliens who had achieved nondeportability under the prior law's statute of limitations, has been sustained.[30] In practical effect, the INS is now free to proceed no matter how many years have elapsed since the alien was admitted to this country, how old he was when he was admitted, or how many years have passed since the events occurred which render him deportable. In one famous case, the alien was brought to the U.S. as an eight month old baby in 1910 and the deportation proceedings, started in 1952, are based on a 1938 marijuana conviction.[31] The proceedings are still pending.

---

[30] *Lehmann v. Carson*, 353 US 685, 1957.

[31] *Marcello v. Bonds*, 349 US 302, 1955.

There are some time limitations, it is true. For deportability to accrue under five of the deportation provisions, the event which triggers deportability must occur within five years after the alien's entry.[32] However, these time limits are mere conditions of deportability and not true statutes of limitations. An alien who incurs deportability under any of these provisions remains indefinitely liable to the initiation of deportation proceedings no matter how many years have elapsed since he committed the deportable offense.

While various avenues of relief from deportation exist, they are not always adequate. For one thing, practically all rely on the favorable exercise of administrative discretion, a factor which inevitably involves the subjective reactions of the adjudicator.[33] Moreover, a remedy does not exist for every ground for deportation. It is no answer to say that a universal remedy is available in an appeal to the prosecutorial discretion of the District Director.[34] That, too, depends on administrative discretion and it provides, at best, only a temporary surcease and not permanent relief.

The absence of any statute of limitations in our deportation laws presents a real anomaly. In all other fields of jurisprudence there is provision for repose, after lapse of a specified period of time, for all civil and criminal violations except the most heinous, murder and treason. The 1952 Act's elimination of all time limitations on deportation may be regarded as a concomitant of the xenophobia then rampant. To continue such an omission in the face of the humanitarian concerns developed by aliens during long residence here can only be regarded as evidence of a callous indifference to aliens as human beings which is out of keeping with our traditions.

An alien who is brought here as a child and develops into a criminal is a product of our own society. To convict him for his crime is to make him pay the traditional penalty. But then to go further and deport him for his crime is to make him pay twice, once for his crime and once again for being an alien. On any realistic appraisal, deportation under these circumstances can only be regarded as a penalty.

Our deportation laws should not be relied on to fight crime. That is the function of our criminal laws. If an alien who is a permanent resident commits a crime, he is subject to prosecution under our criminal laws, the same as a citizen. He should not be subject to the additional penalty of deportation because of the same criminal conduct, especially if he has lived here for many years and can properly be regarded as a product of our society.

---

[32] *See*. Sec. 241 (a) (3), (4), (8), (13) and (15), INA.

[33] *See*. Roberts, *The Exercise of Administrative Discretion Under the Immigration Laws*, 13 San Diego L. Rev. 144, 1975.

[34] *See*. OI 103.1 (a) (1) (ii).

Since the courts are not likely to recede from their long held conclusions as to the nature of the deportation process, the alternative is to restore a meaningful statute of limitations. There are two features that should be considered. The first is in the nature of the traditional statute of limitations, which terminates the right to bring a case of action unless it is started within a specified period after the cause of action accrued. While there will be valid differences of opinion as to the amount of time to be specified, it seems to me that, for starters, a ten year period could be considered. In other words, an alien otherwise subject to deportation could not be deported unless the deportation proceedings were initiated before the expiration of ten years from the date the alien became deportable. Suitable exceptions could be carved out in the cases of aliens quilty of exceptionally egregious conduct, such as war criminals and others encompassed in Sections 212 (a) (33) and 241 (a) (19) of the INA. Ten years seems to be an appropriate period, since that is the maximum period of physical presence and good moral character fixed for eligibility to suspension of deportation under 244 (a) (2) of the INA, which covers the more serious grounds for deportation.

The second feature to be considered is an appropriate limitation on the deportation of aliens who have deep roots here and in whose case the ground for deportation may have arisen relatively recently. Such an alien would not be covered by the ten year limitation suggested above. In the case of such an alien, the limitation would not be the traditional one, geared to the date deportability first accrued, but would instead take into account the length of the alien's residence here. A simple formula could be devised, immunizing any alien from deportability after a suitable period, *e.g.*, fifteen years, of continuous residence in this country. An appropriate exception could be carved out to cover exceptionally egregious conduct.

CONCLUSION

Over sixty years ago, in an opinion by Mr. Justice Holmes in an early case involving deportation based on post-entry conduct, the Supreme Court stated:[35]

> ...It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not conviction of crime, nor is the deportation a punishment; it is simply a refusal by the government to harbor persons it does not want. ...The prohibition of *ex post facto* laws in article 1, Section 9, has no application.

---

[35] *Bugajewitz v. Adams*, 228 US 585, 591, 1913.

This simplistic view, I submit, is no longer realistic. Since the courts still adhere to it, it is up to Congress to take action more in keeping with the needs of the world today. A sensible statute of limitations would not only benefit aliens who, by their long presence here are factually part of our nation, but it would also free the resources of the Department of Justice to confront its more pressing immigration problems, the more recent entrants.

The Select Commission on Immigration and Refugee Policy is now studying the deportation laws in depth, in preparation of its report and recommendations to Congress next year. A statute of limitations on deportation is worthy of its consideration.

9

Service Response of Social Agencies and the Church to the Needs of Undocumented Aliens

ANTHONY J. BEVILACQUA*

THIS brief presentation will describe some of the basic needs and problems of the undocumented aliens and attempt to suggest what should be the service response that social agencies can provide to meet these needs and problems. It will also explain briefly how the Church as an institution can be an advocate, a defender, a voice on behalf of the undocumented.

PRELIMINARY OBSERVATIONS

1) There are no social agencies established solely to provide services to the undocumented. Social agencies which might assist the undocumented are those which aid immigrants in general.
2) Most social agencies aiding newcomers do not provide assistance programs for immigrants in general and hence provide none for the undocumented. The majority limit their service to the resettlement of refugees.
3) Few social agencies have an adequate knowledge and appreciation of the language, culture, history and unique problems of the undocumented.
4) Few social agencies are knowledgeable of the many complicated factors in the United States as well as in the source countries that have been influential in causing the so-called problem of the undocumented.
5) Except for the resettlement of refugees, the U.S. government provides no programs or other aid for immigrants in general and, consequently, none for the undocumented.

NEEDS AND PROBLEMS OF THE UNDOCUMENTED

The undocumented have the same needs as all human beings: the need for food, shelter, health care, employment and schooling for children. Like other persons, they have the need for acceptance and understanding, the need to be loved and encouraged. Because of their extralegal status, however, for the undocumented these human needs are usually more intensified and their fulfillment more difficult.

---

*Chancellor and Director, Catholic Migration and Refugee Office, Diocese of Brooklyn, Adjunct Professor of Law, St. John's Law School.

The undocumented have the same problems as most legal immigrants: a sense of loneliness and isolation, difficulties of a new language, the traumatic impact of a new culture and different value system, a separation from his/her extended family, environment and employment. For the undocumented, however, these problems are compounded because of their illegal status.

In addition to these difficulties, the undocumented are subject to other special problems. Among the difficulties particularly unique to the undocumented, the following are the major ones:

1) Most of the undocumented live in daily terror of being arrested and deported. As a result, they tend to avoid any kind of socializing. Many shun such public places as church services, theaters, cinema, etc. They avoid making friends lest they be compelled to reveal their illegal status.

2) Since they can be arrested and deported at any time, they try to make as much money as fast as they can. They will work long hours, often at two jobs. The strain and exhaustion of such a pace result in harmful effects on the family: the neglect of children and family tensions which often lead to physical violence.

3) The fear of arrest, the tensions at work and in the family, the sense of rejection felt because of their illegal status — these and other factors frequently result in serious psychological harm to the undocumented themselves as well as to their families. The psychological problems of many of the undocumented are grave enough to warrant professional help but for the most part such assistance is not available or will not be sought.

4) If one of the spouses is a citizen or legal resident and the other is undocumented, the illegal status of the one spouse often becomes a weapon for the citizen or legal resident spouse. In extreme situations, it is not uncommon for the legal spouse to telephone the immigration authorities to deport the undocumented spouse. Such actions or even the threats to report a spouse can only create severe conflicts in the family both between spouses as well as between children and

5) Because of their illegal status, the undocumented are often exploited by their employers. They are compelled to work long hours in unsafe and unhealthy conditions for low wages. It is another form of servitude since they have no

recourse. If they are parents, this becomes another factor causing neglect of children and explosive family conflicts.

6) When one or more family members are undocumented, the arrest and deportation of these persons often leads to a permanent separation of the members of the family.

7) Many of the undocumented are constantly on the move. The arrest of one member of the family or the reports of possible raids by immigration agents will cause a family to move immediately to another area. The result is that children often are compelled to change schools; friendships are not encouraged and stability in the community is rarely achieved.

8) The undocumented live constantly with a "Sword of Damocles" hanging over their heads. In their places of employment, they dare not complain about sweatshop conditions, safety measures, low wages, unsanitary conditions, etc., since the employer can always report them to the Immigration Service. Similarly they are fearful of neighbors who may know of their illegal status and who may, out of vindictiveness, report them to the Immigration Service in the event of any conflict that may occur.

9) Many are exploited by unscrupulous lawyers or pseudo-lawyers, who promise them a "green card" in return for substantial outlays of money though aware that there is no possibility of a favorable solution.

10) They are objects of hostility on the part of a high percentage of the populace. They are branded as the cause of high unemployment, deterioration of neighborhoods and increase in crime rate. In addition, they are accused of having triggered financial crisis in innercity hospitals, of having exploited welfare funds, food stamps and other social benefit services while not paying taxes to pay for these services.

This sense of hostility and rejection tends to isolate the undocumented even more from the community and is another factor contributing to the psychological traumas which many of them suffer.

SERVICES OF SOCIAL AGENCIES

By social agencies, I intend to include not only nonsectarian social agencies but also those sponsored by churches. Among the helpful services which social agencies can provide would be the following:

Legal Services

Above all else, the undocumented are anxious to regularize their status in this country. Many need legal assistance at deportation hearings. Legal services by persons knowledgeable in the field of immigration law are a valuable benefit rendered by social agencies of the Church and other groups. Since many of the undocumented are very poor, it is not possible for them to pay for the services of an immigration lawyer. Social agencies, staffed by trained counselors, can provide legal services at least for routine cases. Unless a social agency has the benefit of an attorney, cases which are beyond the capacity of an immigration counselor will have to be referred to an immigration lawyer. Social agencies should maintain a list of reputable immigration lawyers.

In many, if not in most, cases it is not legally possible for the undocumented to regularize his or her status. Even when an undocumented person is informed of this impossibility, the social agency is performing a valuable service. Such information hopefully will prevent the undocumented from being exploited by persons who will promise them a green card in return for considerable outlays of money. A few nonsectarian and church related social agencies are already providing valuable legal services to the undocumented. Assistance in immigration problems is also available from the Legal Aid Society and a few neighborhood legal service offices. The Immigration and Naturalization Service provides undocumented aliens facing deportation with a list of social agencies that can provide free legal services. It also provides office space for such social workers at the District Office in New York.

Revolving Bail Fund

Years ago it was more feasible to have a revolving bail fund when the usual bond was about $500. Today it has been raised to several thousand dollars and has become almost impossible to subsidize such a fund. If any agency can afford such a revolving bail fund, it is a great benefit to the undocumented as well as to the family.

Undocumented aliens are generally very honest people and will abide by the conditions of the release. They are also known for paying back any loans made.

Pregnancies

A pregnant undocumented woman seeking prenatal care is often turned away by hospitals because she cannot pay and cannot obtain Medicaid. Social agencies should make every effort to assist such persons. Some parishes, for example, have made arrangements with local hospitals whereby the cost of prenatal care and delivery would be minimal. Often the parish would pay the hospital bill and the woman would pay back the parish later if she were able.

There is an organization known as Birthright which will give assistance during pregnancy and delivery to undocumented women. In these cases, the women must be assured of complete confidentiality.

Medical Assistance

Frequently children of undocumented aliens are not immunized. Families are either fearful of bringing children to health clinics or they do not have the information that such services are available. Since they are fearful to approach public facilities, social agencies may be able to provide the assistance or information needed.

On March 3, 1980, the *New York Times* reported a rise in tuberculosis in New York City, and that the Department of Health had reported that tuberculosis was becoming a critical health problem in the city again (p. B-3). Three years ago, New York City's Health Commissioner expressed a similar concern over the high incidence of tuberculosis among legal immigrants. The incidence represented almost 7 percent of all new cases of the disease. Countries with the highest incidence were Hong Kong, Dominican Republic and the Philippines. These countries are the same source countries of a significant number of undocumented aliens. Thus, there may be thousands of undocumented aliens in the city with untreated active tuberculosis. Even if an undocumented alien received a free X-ray and was discovered to have tuberculosis, because of the fear of public hospitals as well as the cost involved, that person might not undergo required therapy. Here again, social agencies can provide the assistance or information to the undocumented which may also prevent the spread of the disease.

Because of the fear of approaching hospital clinics which often demand Medicaid cards or other identification, many poor, undocumented aliens fail to receive assistance for their medical problems. Social agencies can provide such medical help and should maintain a list of doctors, dentists, psychiatrists and other medical professionals who can speak the language of the undocumented. In fact, several parishes in Brooklyn and Queens have established their own health clinics with volunteer doctors and nurses who speak the language of the people.

Counseling

Many undocumented aliens suffer from serious psychological problems. Either they are unaware of their need for professional help or they are fearful of seeking help lest it bring government's attention to them or they are unable to meet the cost. The result is that most of the undocumented with psychological problems turn to relatives, friends or clergy in time of real need or, more often, they suffer in silence. Social agencies can provide a valuable help by making available counseling services for the undocumented with emotional problems.

Education

Many undocumented parents are reluctant to send their children to public schools, fearful that it will entail an association with government. At times public schools, particularly outside New York City, will demand proof of legal status before allowing a child to attend classes or will demand high tuition if such proof is not provided. Social agencies, especially Church related, can offer valuable guidance in this area by informing the undocumented of the rights of children to attend public schools, or referring them to parochial schools or to facilities which provide tutoring to undocumented children not attending any formal classes.

Other Assistance Programs for the Undocumented

Social agencies can offer assistance in finding employment. In states where an employer sanctions law is in effect, social agencies may not be legally able to provide employment assistance to undocumented aliens lest they become subject to the penalties of the legislation.

Social agencies can provide assistance in locating housing, classes or information for learning English and lists of reputable doctors, dentists, lawyers and other professionals who speak the language of the undocumented.

ROLE OF CHURCH AS AN INSTITUTION ON BEHALF OF THE UNDOCUMENTED

While social agencies, both Church related and nonsectarian, can provide many legal and social services to the individual undocumented aliens, the Church as an institution can serve the welfare of the undocumented on other levels as well.

Since most of the undocumented feel lonely, isolated and rejected, the Church must constantly encourage them. The Church must affirm their personhood and worth and must convey to them that as human beings they are equal to everyone else — that they have value; that they are welcome as members of the family of the Church; that they are people of courage and high esteem; that they are persons who must not feel guilt or shame for their status. The Church must build up their self-image and sense of membership to the family of the community and Church, not only in words but in different signs — through the social services, celebrations and other spiritual ministries.

The Church must also be an advocate and voice for the undocumented who have no voice.

Legislation

The Church can effectively assist undocumented aliens through the influence it has on legislation on the state and federal levels. The Church must be vigilant and forceful in opposing any legislation harmful to the undocumented, such as employer sanctions bills, and promote beneficial proposals. Particularly helpful is a network of cooperation by the various religious denominations in such lobbying activities. Every effort should be made to promote amnesty for all undocumented aliens already residing in the U.S.

Government Activities

Among the various government activities in which the Church can play a beneficial advocacy role on behalf of the undocumented are the following:

1) *Abuses by the Immigration and Naturalization Service:* While abuses by the INS have not been too frequent, they do occur at times. They have occurred especially in raids on places of employment and in homes. The Church should use its voice in protestation, correcting and preventing such abuses.
2) *Detention Facilities:* The facilities in New York are primitive and efforts should be made to improve them. The INS does allow Church and other religious denominations to conduct religious services there and also permits clergy to speak to the detainees.
3) *Census and Undocumented Aliens:* Churches are assisting the Census Bureau in transmitting to the undocumented information concerning the census.
4) *INS, Labor Department and other government offices for the benefit of undocumented:* Particularly in regard to the INS, Church members must be on guard not to portray all actions of the Immigration Service as wicked and all those of the undocumented as blameless. In spite of occasional abuses on the part of the INS, its officers have been helpful on many occasions in the Church's work on behalf of the undocumented.

Education

Since most people are not informed or are often misinformed about the complex issue of the undocumented aliens, the Church can play a valuable advocacy role in the education of people. The major purpose of such an educational program is to remove myths about the undocumented, provide accurate information about them, improve conditions for the undocumented and promote the concept of amnesty. This educational process is carried out especially by: conferences; interviews to the various media facilities (TV, radio, newspapers, magazines; addresses to various groups (labor unions, academic groups, colleges, community coalitions, civic associations, ecumenical groups) and lastly through cooperative activities with labor unions and other religious bodies.

10

The New Immigration: A Labor Response

JAY MAZUR*

THE advent of the new immigration is a development of great import for American labor. The fortunes of the trade union movement, after all, have been inextricably linked to the fate of our nation's successive immigrant groups. Built by immigrants, American trade unions have been sustained by each wave of newcomers to the labor stream.

Throughout our time, the experience of the International Ladies' Garment Workers' Union has exemplified the encounter of the immigrant worker with industrial society. Ours has been an unceasing battle to gain acceptance and protection for those who have entered our society at its lowest rungs — a battle that has been recapitulated in each generation.

Eighty years ago, when garment workers began their struggle to forge a union, experts and pundits scoffed at their efforts. These garment workers, they said, are unwashed immigrants, too individualistic to make common sense; too poor to think about something greater than the fight for daily bread; too ignorant to grapple with their better-heeled employers.

History has disproved the claims of the experts and vindicated the efforts of our immigrant founders. But our union did not rise single-handedly from the dust. At our hour of greatest need, the labor movement provided its full support. Then, as now, American labor was champion of human rights. Not human rights for white, native, English speaking males alone, but human rights for immigrants; for women; for minorities. And not just the political rights enshrined in the Constitution, but economic rights as well: the right to a job; the right to a standard of living that befits the richest country on earth; and the right to collective self-representation in the workplace.

Just as immigrants posed the human rights issue at the dawn of the 20th century, so undocumented immigrants confront us with the human rights issue at this century's close.

Now, as then, American labor is in a unique position to offer the new immigrants, often intimidated and abused, protection, recognition and dignity as productive workers. Now, as then, American labor must stretch out its hand to those immigrants courageous enough to struggle for better conditions on the job.

---

* Vice President, Local 23–25, I.L.G.W.U.

But as long as our immigration system continues to condemn millions of new immigrants to a vulnerable underclass, we fear that these efforts will not suffice. Without a thoroughgoing reform of the immigration system, the immigrants' promised land will remain a nightmare. We in the labor movement want to transform this nightmare back into the American dream.

The roots of our current dilemma are based on the consequences — unintended and unexpected — of a much needed and well-justified reform. In the 15 years since the country of origin system was abolished, the character of the immigration stream has dramatically altered. In 1965, the number of immigrants was nearly 250,000. In 1977, more than 450,000 immigrants were admitted to the U.S. More dramatic has been the change in the composition of the new immigrants: where the vast majority of immigrants under the old system came from a few countries in Europe, today's immigrants come primarily from a growing number of Third World countries.

In comparison to the 85 million working Americans, the 230,000 immigrants who annually enter the labor force are easily lost. But their importance takes on new dimensions when put in proper perspective. Legal immigrant workers are a significant component of the manpower stock added to the labor force each year: more than 12 of every 100 workers entering the labor force during the next ten years are likely to be immigrants.

Moreover, immigrants tend not to disperse evenly throughout the nation; as in the past, they exhibit a propensity to concentration in particular locales. Some of today's melting pots are the traditional ones; others serve as entry points for the first time. This new immigration has coincided with the continued decline of our central cities, which has been particularly marked in the North. Because the immigrants are so heavily urban-based, their influx has significantly altered the population of some of our major cities. In New York City, for example, the number of legal alien residents increased by almost 40 percent between 1970 and 1979. Today, more than one-eighth of the city's seven and one-half million residents are recent immigrants.

These changes have been accompanied by an increase in undocumented migration and a dispersion of this population out of the southwest border regions where it had been traditionally concentrated. As with legal immigrants, New York has been a common destination for large numbers of their undocumented counterparts. Though the covert nature of this migration makes it impossible to directly estimate its size, the estimate of 750,000 developed by the New York City Planning Commission is frequently accepted.

These legal and undocumented migrants have followed a well-beaten path into the low wage, competitive manufacturing industries that have traditionally depended heavily on immigrant labor. Developments in the clothing industry epitomize this process. The women's garment industry has always been an entry point for immigrants, external or internal. At the turn of the century, the garment industry absorbed thousands of immigrants from eastern and southern Europe. From World War II on into the 1960s, a subsequent immigrant flow — this one composed of internal migrants from the American South and from Puerto Rico — made its way into the garment industry in the Northeast.

In the 1960s these migration currents began to taper off. Migration from Puerto Rico during this period was significantly lower than the decade before, and during the 1970s Puerto Rican migration to the United States dwindled further. Black migration from the South has followed a somewhat similar course, although it is a little more difficult to track with precision. Nonetheless, it is clear that the South is no longer exporting its poor. Furthermore, the Northeast is experiencing a net outflow of poor migrants.

As these streams have dried up, the inflow of black and Puerto Rican workers into the traditional immigrant industries has faltered, and, if perceptions of the composition of new union members is correct, it has virtually dropped off. The workers who enter into labor-intensive industries, like the garment industry, are primarily new immigrants — legal and undocumented alike. Though the very newness of the immigrant workforce in the service industry makes it impossible to fully detail its configuration, some proximate measures can be offered.

The apparel industry is New York's largest manufacturing industry and its largest employer of blue-collar women. Unfortunately, census data are not sufficiently detailed to paint a precise picture of the composition of this labor force. But in view of its dominant share in overall manufacturing employment in the city, it is unlikely that apparel should substantially diverge from the patterns displayed by manufacturing.

This labor force is clearly a heavily immigrant group. In 1970, 35 percent of these workers were foreign born and another 25 percent were second generation Americans. Ten years ago 11 percent of the female workforce came from the Caribbean and Latin America and an additional 2 percent came from China. Given an increase of over 50 percent in the declared alien population in New York City over the past decade, the immigrant share of blue-collar employment has undoubtedly increased.

In 1970, Puerto Ricans comprised 15.1 percent of the female manufacturing workforce. But they accounted for less than 55 percent of the total female Spanish origin population employed in manufacturing. One can assume that the workers in the remaining 45 percent were predominantly immigrants. Given a clear trend among Puerto Ricans away from employment in manufacturing — a trend particularly marked among mainland-born Puerto Ricans — it is likely that the size and percentage of the non-Puerto Rican Hispanic labor force has increased.

Unlike previous immigration waves, the new immigration has a large female component. For this reason, the apparel industry plays a central role as an industrial absorption point. The Chinese membership in our local has climbed from less than 5,000 to over 10,000 in the past ten years. And it is clear that the Chinese are not alone: the reports of our organizers, as well as several ethnographic studies of Colombian and Dominican immigrants in New York all point to the ubiquitousness of apparel employment among female immigrants.

Unfortunately, immigrants, particularly the undocumented, have encountered conditions that depart far from the American promise. Employers in competitive industries like garments have seen the influx of new immigrants bereft of basic rights and protections as a pretext to evade the basic wage and labor standards that brought the workplace out of the sweatshop 50 years ago. Undocumented workers have been channeled into an underground sector, whose presence is making itself felt in almost every major city throughout the country.

In Los Angeles, a special task force investigating over 1500 garment factories employing immigrants found that over 95 percent were in violation of basic labor standards. They uncovered all the familiar evils of the old sweatshop: homework, subminimum wages, child labor and worker abuses.

In New Jersey, a preliminary investigation conducted by the state labor department uncovered over 1,000 workers engaged in homework and 150 factories in violation of basic labor codes.

In New York, government investigations of the most serious areas of exploitation have been slow to get off the ground. But the experience of our union testifies to the pervasiveness of exploitation.

In the Bronx, ILGWU organizers located over 500 small non-union garment shops. Many shops operate in abandoned factories, in homes, in vacated apartment buildings.

In northern Manhattan — the westward tip of the island stretching north from 125th Street — union organizers have found more than 200 factories that fit into the sweatshop category.

Sweatshop is not a misnomer for the factories that employ so many undocumented workers. As a recent document issued by New York State Senator Franz Leichter reports: "It is not uncommon for thirty or more sewing machines, several steam pressing machines and other equipment to be crowded into one small room. The crowded quarters are always poorly ventilated; many have no openable windows or doors except for the front entrance. The steam from the pressing machines makes the temperature and humidity even more intolerable. Most of the factories...have serious fire hazards...the windows are permanently barred, the fire doors...are locked shut...and in some cases fire doors that are openable open onto a hallway rather than outdoors".

Homework, the scourge of the garment industry 70 to 80 years ago, has returned with a vengeance. And it is not just a dirty little secret: it is an open, festering scandal. In every immigrant section of this city there are women laboring at home, bent over a sewing machine, pushing out garments for as little as a dollar or two an hour. Employers seeking homeworkers advertise almost daily in foreign language newspapers.

Homework is often called a cottage industry. That may have been true 100 years ago, but in 1980 it has become a big business. Employers maintain established distribution routes, picking up and delivering goods to scores of workers.

Unlike native workers, undocumented workers cannot easily rebel, although our union has encountered some success in recruiting them. But these instances of success testify to the constraints that undocumented workers face. Only where undocumented workers were a majority of the labor force of a given employer, or where these workers found jobs in previously organized shops has there been any influx of undocumented workers into our union.

Undocumented workers are effectively barred from organizing themselves and they are thus deprived of the most important instrument of social and economic advancement — collective bargaining. Unlike the other groups of immigrants, today's immigrants have no means of self-defense. Their vulnerability and weakness adversely affect the ability of legal immigrants and even native-born Americans to organize.

Recently, the Chicago branch of the ILGWU launched an organizing drive in a non-union shop. Almost immediately, a clear majority of the workers signed authorization cards, and the National Labor Relations Board scheduled an election. But the employer went to work and began threatening the undocumented workers among the workforce. On the day of the election four undocumented workers who had expressed support for the union were curiously missing and the union went down to defeat by a one-vote margin. The pattern is by now a familiar one to ILGWU organizers: threatening detection and deportation is a first-rate way to contain a union challenge.

Today's immigrant workers are not rising up against their employers because they live in fear of arrest, deportation and abuse. Undocumented garment workers have good reason to be afraid. The arbitrary and unpredictable character of Immigration and Naturalization Service enforcement policies subjects undocumented workers to apprehension at any time and at any workplace. Such practices create a severe climate of fear and intimidation that only strengthens the employers' advantage, only guarantees employers freedom to exploit these vulnerable workers.

Other government agencies have also played a role — largely through negligence — in contributing to the exploitation of undocumented workers. Undocumented workers possess few rights. But they are guaranteed the basic protections of the Fair Labor Standards Act.

In the years when undocumented immigration mounted, enforcement of labor standards was either lax or nonexistent. New duties were heaped upon agencies responsible for policing the basic labor codes. But in typical fashion, the agencies never received additional resources.

In the past two years, government officials on the federal level have awakened to the danger that arose while they slumbered. But their new found vigilance may be too late and their efforts too feeble.

State agencies that had once vigorously enforced basic labor standards have fallen into disrepair. In New York State, for example, appropriations for labor standards were cut 40 percent during the height of the fiscal crisis. As a result, regular field investigations are no longer carried out. Similar fits of budget cutting and budget restraint have kept the Occupational Safety and Health Act (OSHA) from enforcing safety rules in all but the most dangerous of industries. State and city agencies charged with inspecting factory buildings and ensuring that they are maintained to code have been forced to radically pare operations.

Today the 1100 inspectors for the Labor Department are our best defense against exploitation. But as high Labor Department officials have admitted themselves, this corps is dwarfed by the immensity of the task that confronts them. There are five million workplaces under the jurisdiction of the Employment Standards Administration. Of those inspected annually, by the Department's own report, 60 to 75 percent of them have been found in violation of the Fair Labor Standards Act (FLSA). At the present inspection rate — about 60,000 firms a year — it will take 62 years to investigate them all.

Arresting the slide back into the sweatshop is a priority, not only to maintain wages, to stem the erosion of working conditions and to make good the rights guaranteed by law, but also to ensure that the integrity of what we call the American way of life is preserved. Restoring justice and equity to the workplace is a task that deserves renewed attention and greater energy from the relevant government agencies — and we call upon them to fulfill their statutory responsibilities.

But the stain of the sweatshop will persist unless our government reforms its immigration policy. The first step in that direction is to grant amnesty to all undocumented workers currently residing in the U.S. A total amnesty for all undocumented immigrants here today is the only humane and workable response to the existing system.

Of course, amnesty should be only one component of a program designed to reform the immigration system. We understand that the American economy has limits and is therefore, unable to accommodate everyone who seeks the advantage of American citizenship or residence — be it long term or temporary. We, therefore, do not support open borders but we caution against cosmetic measures that will do little to deter undocumented immigration in the future. The causes of undocumented migration should be attacked at the source — here, in the United States, and in the sending countries. Compassion, not fear, should guide reform. Sober analysis, and not an impulse to punish the victim, should inform our attempts to alter the system. But at the same time, we must ensure that the interests of American workers are protected and that our desire to alleviate the plight of the immigrant does not do damage to native and immigrant worker alike.

For these reasons, we do not favor measures that would impose a penalty upon employers of undocumented workers. Penalties will do little to deter employers from hiring undocumented workers; if anything, they will drive even more employers underground. What is more, penalties will impede enforcement of basic labor standards. The existing mandate of the responsible agencies has yet to be fulfilled without adding a new burden of enforcement. And how likely is an undocumented worker to report a violation of wage or hours laws, if he knows that the same agency will fine or imprison his employer for hiring undocumented workers?

By the same token, we cannot accept efforts to expand the H—2 program, or to introduce a system of temporary labor migration along European lines. The European experience demonstrates that "temporary" workers inevitably become permanent. In each case in which temporary labor migration has been tried, so-called "guestworkers" end up as a distinct, underprivileged, underpaid subgroup whose presence serves to hold down wages and dampen the struggle for better working conditions. To those who maintain that there are labor shortages and that certain jobs are inherently undesirable, we must answer that many unpleasant jobs of our society have been upgraded, through unionism, to pay decent wages and offer good benefits and as a result suffer no shortage of labor.

Rather than penalities or temporary worker programs, we advocate stronger labor standards, vigorous enforcement and a revamped labor law that would fully protect all workers' rights to unionize. The government should put an adequate floor under wages, a floor that will ensure that no worker's full year, full-time earnings fall beneath the poverty level. Labor standards agencies need bite: more staff, stiff penalties and speedy prosecution of repeat offenders. Goods manufactured under illegal conditions should be confiscated. And we in the labor movement need a return to the spirit of the original Wagner Act; pressure for labor law reform should not be slackened.

This set of recommendations consisting of a full amnesty, reform of the INS and strict enforcement of fair labor standards, will free undocumented workers from fear and exploitation. Moreover, it will halt the development of an American underclass, which is so much at odds with time-honored American ideals.

Now is the time to act. As a nation, we cannot afford to tolerate another day of suffering, another day of fear, another day of loneliness, another day of exploitation. We cannot sit by while human beings are treated as machines or industrial animals. By doing so we will be abandoning our most basic principles. We will be suggesting that human dignity is an expendable commodity. We will be ignoring the demands of our national conscience. And we will be saying that we are for freedom and equality only if it is convenient.

11

Panel Remarks

NORMAN HILL*

ALTHOUGH the A. Philip Randolph Institute is primarily concerned with advancing the interests of black trade unionists it has always tried to follow in the tradition of a man who insisted that there are no black problems, only human problems. For A. Philip Randolph, any human being who suffered, any human being who was subject to injustice, and any human being who was treated as anything less than equal must be embraced, defended and aided. In line with A. Philip Randolph's tradition, I am here today not only to offer you a few brief comments, but to also express the solidarity of the Randolph Institute with the cause of America's undocumented workers.

To begin with, we must confront an unfortunate reality: the black community, especially the poorer people and those who are without jobs, view undocumented workers and refugees with great suspicion and apprehension. They are seen as competitors for scarce jobs, scarce educational resources and scarce housing. In many instances, new immigrants are seen as perhaps the most dangerous enemies of black people.

For anyone who knows the history of the racial caste system in the South, as well as the history of interracial relations in the North, the patterns of conflict are all too familiar. Just as poor whites viewed poor blacks as their major rivals, poor blacks now view poor immigrants as the chief threat to economic survival. But this development is not too surprising, since undocumented workers are easy targets; they are, in the eyes of many unemployed blacks, the visible, tangible cause of unemployment. Whereas talk about lack of demand, imports and the rising prime rate appear to be nothing more than vague abstractions, the rumors about immigrants stealing jobs from black people appear to be plausible. Once again we have the scandal of one oppressed group, fighting another, all for the possession of a few crumbs.

This scandal is manifested in the anti-amnesty sentiments of many black people. Indeed, a restrictionist approach to immigration policy probably has no stronger allies than the poor blacks — and whites — who have little hope of ever obtaining decent employment in our society. These victims of our increasingly unstable and irrational economic system are now willing to victimize their less fortunate brothers and sisters, the undocumenteds. Such a turn of events can only be regarded as tragic — tragic because human beings who should be allies are forced to turn on each other.

---

* A. Philip Randolph Institute.

We must overcome this terrible state of affairs to reconcile and unify people who share common interests.

Much can be learned from A. Philip Randolph, trade unionists and the early civil rights activists. All of these people understood one essential fact of political life: common bonds cannot be developed until individuals and groups perceive their common interest. To put it another way, we will accomplish nothing by lecturing black people, especially the jobless, about their moral duty to aid the undocumenteds. Moral exhortations directed to a man or woman who cannot pay next month's rent, or who cannot afford a pound of hamburger are ineffective as well as insulting. Instead of accusing people of selfishness, bigotry and outright meanness, we should spend our time educating — giving people the facts about the plight of the undocumented workers, explaining how undocumented workers are exploited and brutalized and showing that the oppression of one minority group, the undocumenteds, tends to legitimize the future oppression of another minority group, America's black people.

Proponents of amnesty must do something else as well — they must become vocal and persistent advocates of economic policies leading to full employment. Without a vastly improved economic environment, opposition to a full amnesty will be intense because many people will view such a policy as a threat to their own livelihood. In saying this I am not arguing that we should postpone amnesty until we have 4 percent, 3 percent or 2 percent unemployment. If we waited for that, we could — given the present approach of the Carter Administration — wait and wait and wait. Rather, I am advocating that the supporters of amnesty begin now to link this worthy demand with the demand for full employment and economic justice. We must insist on jobs for everyone, jobs which are not living hells.

Finally, we must appeal to the conscience of America. We must transform the immigration debate into a debate about our nation's values, values which cannot exist side-by-side with sweatshops, terrors and an underclass of people deprived of their legal and human rights. In short, we must not permit the debate to be framed in terms of economic costs; we must frame it in terms of human costs. And by doing that, we can — with hard work — expect to win.

Part 2

12

Opening Remarks

KLAUS FELDMAN*

DALE DeHaan, the Deputy U.N. High Commissioner for Refugees, has asked me to tell you how pleased he is with the latest legislative accomplishments and that the Refugee Bill has now been signed into the Refugee Act of 1980. I would like to emphasize some major concerns which my office, the United Nations High Commissioner for Refugees (UNHCR) has in this field.

The United States is currently a party to the only legal international instrument in force which addresses itself exclusively to the status of refugees and, in fact, all aliens. Benefitting from the provisions of the international accord, refugees are somewhat privileged compared with other aliens.

UNHCR considers as its main mandate and most important task the international protection of refugees. Without an effective protection and respect by state governments for the basic rights contained in the Refugee Convention, there would be no refugees — either because they would not be allowed entry into a new country, be denied safe haven to stay and enjoy refuge or might have been returned to their country of origin against their will.

The defense of this particular group of aliens is at the very heart of my office. Therefore, we are particularly pleased that the United States, after having signed the Refugee Protocol in 1968, has finally adopted into domestic law the definition of the international instrument. That means that never again should there be an ideological or a geographical limitation in the definition of a refugee.

From the international point of view, I should like you to know that we will continue to be interested in monitoring and improving the implementation of the legislation advancing further an adherence to the standards of international norms.

We are particularly interested in the question of asylum, the legal status of refugees once admitted, the handling of deportation matters and extradition and other basic questions such as access to the labor market as well as naturalization.

---

*Acting Regional Representative, U.N. High Commissioner for Refugees.

I would like to inform you that my office favors the establishment of a "Board for the Determination of Asylum and Refugee Status" to be located at the Department of State which will include the participation of others from interested departments. Such a body would facilitate uniform decisions in all parts of the United States wherever asylum seekers might find themselves.

Concerning the legal status, UNHCR considers the question of equal treatment of all refugees in accordance with the Refugee Protocol of particular importance. In this area, much has still to be done. Any alien who is admitted as an immigrant to this country still has a more favorable legal status than does a refugee. Other aliens who enjoy the protection of the country of their nationality are protected under the general principle of reciprocity and are therefore, in a better position than the alien refugee. Some refugees, although formally declared such by having been granted asylum, for instance, still have no meaningful legal status under present American legislation.

The question of deportation procedures continues to be of concern to UNHCR, in particular, the implementation of articles 32 and 33 of the Convention as well as the problems caused by deportation to countries which are not the country of origin of the refugee. Some procedural aspects of the Code of Federal Regulations, such as the involvement in deportation matters of the Consular Official in the country of origin, need to be regulated differently in order to comply with internationally recognized principles.

The question of identity and travel documents for refugees might also have to be addressed once the problem of the documentation of aliens is dealt with.

There are about 800,000 persons legally in the United States who are under the mandate of UNHCR; more than a third of them are not yet legal permanent residents and are not the holders of green cards.

Worldwide, our concern is the 8 million refugees who have far fewer rights than the lucky ones in the U.S. Most are living under conditions which make their only worry survival today, not their legal status tomorrow.

Also, we should not forget those aliens who by unfortunate fate have become or are born stateless legally and have very little protection internationally and domestically. The United Nations Convention Relating to the Legal Status of Stateless Persons of 1954 is not as widely accepted as the Refugee Convention and has not been signed by the United States. Neither has the Convention on the Reduction of Statelessness of 1961. We will not be able to solve the problems and settle the issues raised quickly, but we are working on it.

Let us, together, identify the topics which need to be addressed. The speakers will share with you their concern and what they see as the best ways to defend the alien. Some of their ways might also be your way. That, then, will be the success of this conference.

13

Fourth Amendment Considerations in Immigrating Law

AUSTIN T. FRAGOMEN, JR.

DURING the last ten years, the Fourth Amendment has increasingly been recognized as playing a role in the Immigration Law. That recognition has been reflected in a number of Supreme Court cases which has extended the protections of that amendment to the conduct of immigration officers in the field. Those cases have, in many important respects, limited the authority to search and arrest granted to immigration officers in the Immigration Service regulations. At the same time that these cases have extended the protection of the Fourth Amendment to aliens, however, another line of cases has limited the right of aliens to seek the exclusion for deportation hearings of evidence that has been illegally seized or obtained in the course of an illegal arrest. Thus, while Fourth Amendment protections are greater than ever before for the alien in the United States, that alien's right to assert such Fourth Amendment protections in the deportation setting is severely limited.

Under the Immigration and Nationality Act, immigration officers are granted broad powers to conduct searches and seizures of aliens without warrants. Section 287 (a) of the Act authorizes immigration officers to make warrantless searches if necessary to expedite the apprehension of "undocumented aliens". Section 287 (a) (1) empowers an immigration agent to "interrogate any alien or person believed to be an alien as to his right to be" in this country. Section 287 (a) (3) authorizes vehicle searches without a warrant, if the search is to take place within "a reasonable distance" from the border. Finally, Section 287 (c) of the Act authorizes immigration agents to conduct warrantless searches of persons seeking admission to the United States, and of their personal possessions, when the officers have "reasonable cause to suspect" that the persons are excludable under the Act and that such grounds for exclusion will be revealed by a search.

In general, sweeping authority to search for undocumented aliens has been upheld when such searches occur at the physical border or its functional

---

* Adjunct Professor of Law, NYU School of Law and Brooklyn School of Law. Practicing Attorney, Fried, Fragomen, Del Rey and O'Rourke.

equivalent. In *United States v. Almeida-Sanchez*, 411 US 266 (1973), the Supreme Court limited search authority granted by Section 287 (a) (3) of the Act to the physical border or its functional equivalent. While border search authority at the physical border is easily defined, the functional equivalent concept has presented more difficulty to the lower courts. The Ninth Circuit has taken a limited view of what constitutes functional equivalence of the border. (*See*, for example, *U.S. v. Bowen*, 500 F.2nd 960, 9th Cir. 1971). The Ninth Circuit has declined to label any checkpoint away from the physical border the functional equivalent of the border. In contrast the Fifth Circuit has found that a number of checkpoints away from the physical border can be considered the functional equivalent of the border. The Fifth Circuit viewpoint is most clearly enunciated in *U.S. v. Alvarez-Gonzalez*, 561 F.2nd 620 (5th Cir. 1977). The Second Circuit has set forth its viewpoint on the functional equivalent question in *U.S. v. Barbera*, 514 F.2nd 294 (2nd Cir. 1975). In that case, immigration officers boarded a bus in the vicinity of the border and interrogated a passenger for no ostensible reason. The arrest that resulted as held to be unlawful because the incident had not occurred at the border or its functional equivalent. The court noted that the defendant could easily have been a United States citizen.

Although sweeping authority to search at the physical border or its functional equivalent is widely recognized, the scope of search authority granted in Section 287 (c) of the Act is subject to several constitutional challenges. That section of the statute permits searches not only of the person of the alien, but also searches of all personal effects which might produce evidence of excludibility. In the past, such personal effects have mainly included personal papers of individuals, such as letters, diaries and the like. With regard to personal papers, Section 287 (c) is of doubtful constitutionality. Personal papers are protected not only by the Fourth Amendment, which admittedly has little applicability at the border, but also by the First Amendment. The Supreme Court has not resolved the extent to which the First Amendment protects private papers from search and seizure, but it has given strong indication that the protections of the Fourth Amendment are sufficient to preserve First Amendment interests as well. (*See, U.S. v. Ramsey*, 431 US 606, 1977). Since, however, the Fourth Amendment may well provide little protection for such papers at the border, the question must arise regarding First Amendment protection from arbitrary opening and perusal of such papers. In an analogous setting, the court found it unnecessary to determine the nature of First Amendment protections for such papers at the border because the customs officers who opened the correspondence at issue in the case before the court were bound by a regulation which forbade them from reading the contents of the correspondence. (*See, U.S. v. Ramsey, supra.*) The court concluded that the regulation was sufficient to protect a person's First Amendment interest in his or her correspondence. It is doubtful, however, that without such a regulation the authority to open personal papers or correspondence would have been upheld. No such limiting regulation exists in the immigration context; indeed the very purpose of immigration officers in opening the correspondence or personal papers of aliens is to read them for incriminating evidence. It is on this basis that Section 287 (c) may be considered of doubtful constitutionality, as far as it extends to the reading of the personal papers of an alien.

In both *Almeida-Sanchez* and in a number of other Supreme Court cases, the Supreme Court has generally recognized that the authority of immigration officers to search away from the border is no broader than the authority granted to any government official situated inside the United States. Thus, in *Almeida-Sanchez*, the Supreme Court held that probable cause or consent is required for all searches of vehicles away from the border. Likewise, in *U.S. v. Brignoni-Ponce*, 422US 873 (1975), the Supreme Court held that the standards it had adopted in *Terry v. Ohio*, 392 US 1 (1968), for making brief detentions short of a traditional arrest apply as well to immigration officers conducting automobile stops during roving patrols near the border. The Court in *Brignoni-Ponce* acknowledged that short stops of vehicles may be justified on facts that do not satisfy the probable cause standard as applied to an arrest. However, the Court stated that it is necessary for the arresting officer to point to specific and articulable facts which, when taken together with the rational inferences from these facts, reasonably warrant belief that the person stopped is an alien. The Court held that on no account should the mere observance of the occupant's foreign appearance justify a reasonable belief that the person is an alien unlawfully present in the United States. Among the factors cited by the Court as permissibly contributing to a reasonable suspicion are: 1) the characteristic of the area, the proximity of the border, the usual pattern of traffic and the officer's previous experience with alien traffic; 2) information about recent illegal border crossings in the area; 3) the driver's behavior, and the appearance of the occupants of the vehicle; and 4) the physical appearance of the vehicle itself.

An illustration of how the *Brignoni-Ponce* factors are applied in practice is given by a case from the Fifth Circuit, *U.S. v. Saenz*, 578 F.2nd 643 (5th Cir. 1978). In *Saenz*, a sensor device indicated that two vehicles were traveling in tandem away from the border at approximately seventy miles per hour, a pattern frequently used by smugglers. The vehicles were traveling at an hour when local ranchers and tourists were usually not on the road. The vehicles had foreign license plates and only one occupant was in each vehicle, an uncommon circumstance in the case of tourists. Moreover, one of the cars was covered with mud and dust, leading the officer to suspect that it had originated from an unpatrolled river area. Finally, the nervous behavior of the occupants, such as frequently looking in the rearview mirror and swerving the vehicle across the road, alerted the border patrol of unusual and suspicious activity. In these circumstances, the court upheld a brief detention of the vehicle under *Brignoni-Ponce*.

Although in most instances the Supreme Court has limited the search and arrest authority of immigration agents to the authority generally applicable to all government officials under the Fourth Amendment, in one instance the court has adopted a standard substantially different from the Fourth Amendment's standard applying to police officers. In *U.S. v. Martinez-Fuerte*, 428 US 543 (1976), the court upheld broad authority to stop vehicles and interrogate aliens at clearly marked fixed checkpoints in the proximity of the border. The court concluded that routine stops of vehicles at permanent, nonborder checkpoints, although made without warrant, probable cause, or even individualized suspicion, are consistent with the Fourth Amendment. The majority decision to *Martinez-Fuerte* noted that checkpoint stops based on reasonable suspicion would be impractical, because heavy traffic through such checkpoints prevents immigration officers from studying any particular vehicle. The Court also found the government's interest in apprehending illegal aliens to be an overriding factor when compared to the minimal intrusion on a person's Fourth Amendment rights by a momentary stop at a fixed checkpoint

A vigorous dissent by Justice Brennan in *Martinez-Fuerte* raised several criticisms that are well-taken with regard to the conclusions of the majority. Justice Brennan argued that persons stopped at fixed checkpoints, whether or not they are referred to secondary detention areas, are "seized" within the meaning of the Fourth Amendment. Hence, the same principled restraint of law enforcement conduct which the Court applied to roving patrols should be applicable to fixed checkpoints. In addition, Justice Brennan noted that by abandoning any requirement of a minimal, reasonable suspicion in making checkpoint stops, the Court had rendered meaningless the *Brignoni-Ponce* holding that standing alone the ethnic appearance of a person does not justify a stop. Particularly with regard to persons of Mexican ethnicity, immigration officers at fixed checkpoints are basically uninhibited by any objective standard that will prevent them from stopping any alien with Mexican grooming or physical characteristics, including United States citizens of Mexican ancestry. The result according to Justice Brennan, would likely be that United States citizens of Mexican ancestry will become the targets of capricious discrimination.

It should be noted that although the court permitted broad authority to stop vehicles at fixed checkpoints in *Martinez-Fuerte*, it had previously extended the holding of *Almeida-Sanchez* to the fixed checkpoint setting in *U.S. v. Ortiz*, 422 US 891 (1975). Thus searches, as opposed to stops, can only be conducted at fixed checkpoints based on probable cause or consent.

Different problems have arisen with regard to the power of immigration officers to search and interrogate in the urban context, where a stop is generally made of an individual rather than a vehicle. Section 287 (a) (1) of the Act vests officers of the Immigration Service with authority to interrogate any alien or any person believed to be an alien as to his or her right to be or to remain in the United States. It seems clear that *Brignoni-Ponce* limited this broad authority to search in urban areas as well as in border patrol situations. However, in footnote nine, the Court in *Brignoni-Ponce* specifically reserved decision on the question of whether officers may also stop persons reasonably believed to be aliens, when there is no suspicion that they are unlawfully in the country. While it appears well settled that any detention for questioning, however brief, requires reasonable suspicion of unlawful presence in the country, the threshold question of whether it is unlawful for an INS agent to approach an individual on reasonable suspicion of alienage alone remains unresolved.

A series of cases in the lower federal courts have addressed the issue, coming to a variety of conclusions. In *Au Yi Lau v. INS.*, 445 F.2nd (D.C. Cir. 1971), the court held that Section 287 (a) (1) of the Act accords two types of authority to immigration officers: 1) the right to interrogate individuals reasonably believed to be of alien origin — mere questioning with the individual's cooperation; and 2) the right to make forcible detentions of a temporary nature for the purpose of interrogation under circumstances creating a reasonable suspicion that the individual detained is illegally in the country. In *Cheung Tin Wong v. INS*, 468 F.2nd 1123 (D.C. Cir. 1972), the D.C. Circuit impliedthat Section 287 (a) (1) permits an immigration officer to stop a person based on suspicion of alienage alone. However, the Court indicated that the power of an immigration officer to forcibly detain a person stopped on suspicion of alienage can only be invoked when the officer develops a reasonable suspicion that the alien is in the country illegally. The issue regarding whether suspicion of alienage alone is sufficient to justify a stop, or whether suspicion of illegal presence in the country is also required, was raised before the Courts most clearly in two cases, *Illinois Migrant Council v. Pilliod,* 398 F.Supp. 882 (N.D. Ill. 1975), modified on appeal, 540 F.2nd 1062 (7th Cir. 1976) modified, 548 F.2nd 715 (7th Cir., 1977). and *Marquez v. Kiley, 436 F. Supp. 100 (S.D. N.Y. 1977). Pilliod* was a civil suit for declaratory and injunctive relief which challenged the Immigration Service area control operations practice of stopping suspected foreign pedestrians pursuant to Section 287 (a) (1) of the Act. The court held that the stopping of aliens based on foreign appearance alone is inconsistent with the Fourth Amendment's standards set forth in *Brignoni-Ponce,* and enjoined the INS from such conduct. However, the district court's opinion was modified on appeal by the Seventh Circuit, and was finally modified again *en banc* by that court. The *en banc* court held that as long as the person who is stopped for questioning voluntarily submits to that questioning, it is lawful for an immigration officer to approach the person on reasonable suspicion of alienage alone. However, an actual detention for questioning, no matter how brief, requires reasonable suspicion of unlawful presence in the United States. Thus, the Seventh Circuit adopted the same analysis as the previously cited cases from the D.C. Circuit.

In *Marquez v. Kiley*, the Southern District of New York took a more realistic view of the problem than did the Seventh Circuit in *Pilliod*. The case involved the stopping, questioning, and ultimate detention of persons of South American Indian ancestry in the Brooklyn section of New York. This court held that immigration officials can only approach persons to inquire into their citizenship status upon a reasonable suspicion, based on specifically articulable facts, that the person may be an alien unlawfully in the United States.

The newest developments in the field of Fourth Amendment applicability to the immigration context have come with regard to the entry by immigration officers onto private property to search for aliens. In a recent case, *Blackie's House of Beef v. Castillo*, 467 F.Supp. 170 (D.D.C. 1978), the plaintiff, a corporation operating restaurants in the nation's capital, filed a suit in district court against the INS Commissioner and District Director alleging that entry, search and arrest of aliens on his premises violated the rights of the corporation under the Fourth Amendment and constituted an actionable trespass. The court granted the plaintiff's motion for summary judgment, holding that neither the Fourth Amendment nor any statute permits government officials to use a warrant commanding a search for property as authority to enter a privately owned restaurant in search of illegal aliens believed to be working on the premises. In *Zepeda v. INS*, a case recently decided in the Central District of California, the court required that immigration officers have a reasonable suspicion of the presence of undocumented aliens prior to the entry into public areas of businesses to search for those aliens. Previously, it had been considered legitimate for immigration officers to freely enter public areas of businesses accessible to all persons without any degree of suspicion regarding the presence of undocumented aliens. In another case recently filed in the Central District of California, entitled *I.L.G.W.U. v. Sureck*, plaintiffs challenged the legality of raids conducted on a plant in the Los Angeles garment district which resulted in the arrest of numerous undocumented aliens. The searches were conducted pursuant to search warrants which were alleged to have been issued without probable cause in violation of the Fourth Amendment. The search warrants described the premises to be searched but named no individuals. The order also allowed investigators to indiscriminately interrogate workers of apparent Latin extraction without reason to believe that they were engaged in illegal conduct.

While many of the recent trends in the application of the Fourth Amendment to immigration law are encouraging, the recent decision of the Board of Immigration Appeals to restrict the rights of aliens to raise Fourth Amendment claims in the deportation context has, in many cases, limited severely the practical impact of the Fourth Amendment to aliens. In *Matter of Sandoval,* I.D. 2725 (1979), the Board held that the violation of Fourth Amendment rights by immigration officers could not be remedied by the exclusion from an immigration proceeding of evidence illegally obtained. The Board relied on the deterrence rationale for the exclusionary rule which the Supreme Court established as the rule's sole justification in such cases as *U.S. v. Janis,* 428 US 433 (1976). The Board concluded that little deterrence would result from the exclusion in a civil proceeding of evidence seized in violation of the Fourth Amendment.

The Board was quick to realize the severity of its ruling in *Sandoval,* however, in several decisions which it handed down soon after issuing the *Sandoval* decision. In *Matter of Toro,* I.D. 2783 (1980) and *Matter of Garcia-Flores,* I.D. 2780 (1980), the Board held that evidence derived from egregious police misconduct could be excluded from deportation proceedings on the basis that its admission would be fundamentally unfair under the Fifth Amendment's due process clause. The Board was quick to point out, however, that not all Fourth Amendment violations would be considered "egregious" under the Fifth Amendment's due process standard. Nevertheless, these last two cases decided by the Board at least provide the opportunity to challenge illegal government conduct in the deportation context. The Board has given at least some indication that it will find government misconduct to be egregious when an immigration officer should have known that his conduct violated the Fourth Amendment. Thus, good faith violations of Fourth Amendment standards will not result in the exclusion of evidence in deportation proceedings. In one of the cases decided by the Board, the exclusionary rule was not applied because the conduct of the immigration officer, which would have violated the standards set forth in *Brignoni-Ponce,* took place before the Supreme Court's decision in *Brignoni-Ponce.* The officer was, therefore, not on notice that his conduct was violative of the alien's Fourth Amendment rights. In one unreported decision, which was remanded for further determination of factual issues, the Board intimated that a violation of the *Brignoni-Ponce* standards by an officer who should have known the substance of those standards presented a strong case for application of the exclusionary rule. Thus, practitioners should continue to argue that illegal conduct effected by immigration officers with knowledge of Fourth Amendment standards enunciated by the Supreme Court must lead to the suppression of any evidence seized through that misconduct in a subsequent immigration proceeding. Unless such arguments prove successful, the very real progress that has been made in extending Fourth Amendment principles to the immigration area will ultimately be a hollow victory for the alien.

14

Department of Labor: Toward a Sound Approach to Labor Certification

LEON WILDES*

THE historical underpinnings of the labor certification requirement in the law date back to the Contract Labor Act of 1885.[1] This law was designed for the purpose of protecting American workers from the potentially unfair competition of imported foreign laborers and remained a principal part of our immigration law until 1952. The Walter-McCarran Act of 1952, which is basically our present immigration system, repealed this provision and substituted for it a comprehensive requirement prohibiting the entry of certain aliens coming to perform skilled or unskilled labor unless the Secretary of Labor has determined and certified that there are insufficient available workers in the locality of the alien's intended destination and that the employment of such workers will not adversely affect the wages and working conditions of American workers.[2]

As originally enacted in 1952, the restriction was stated in negative terms, rendering immigrants encompassed within its terms admissible unless the Secretary of Labor made the prescribed certification.[3] The provision was considered largely to be a standby measure, to be invoked to protect the U.S. labor market during times of economic necessity. Only if the Secretary of Labor took action did the intending immigrant become inadmissible to the United States.

In 1965 a radical change took place in the immigration law through a statutory amendment of law.[4] The originally negative prescription became a positive requirement. The granting of an immigrant visa or of permanent residence to certain immigrants was now prohibited unless the immigrant first obtained a certification from the Secretary of Labor that his admission to residence would have no adverse effect upon the American labor market. Accordingly, aliens who were presumably admissible unless the Secretary of Labor made a negative certification as to their proposed entry were now inadmissible unless they secured from the Secretary of Labor a certification that their admission would not adversely affect American labor market conditions. The 1965 amendment so dramatically changed the administration of this section of law that it was referred to by one authority as "The Workers Exclusion Act of 1965".[5]

---

[1] Act of Feb. 26, 1885, 23 Stat. 332.

[2] Sec. 212 (a) (14), Act of 1952, as amended, 8 USC 1182 (a) (14).

[3] Sec. 212 (a) (14), Act of 1952, 66 Stat. 183.

[4] Sec. 10, Act of Oct. 3, 1965, PL 89–236, 79 Stat. 917.

* Former National President, Association of Immigration & Nationality Lawyers; now practicing attorney with Wildes & Weinberg, New York.

LABOR CERTIFICATION PROCEDURE PREPARING THE APPLICATION; THE PROCESS; APPELLATE PROCEDURE

The Present Labor Certification Requirements

The requirement of a labor certification and the role of the U.S. Department of Labor in immigration cases derive from Section 212 (a) (14) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182 (a) (14). This section of law provides that certain aliens who seek to immigrate to the United States for the purposes of employment here are not eligible for residence and shall be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

> Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that A) there are not sufficient workers who are able, willing, qualified or equally qualified in the case of aliens who are members of the teaching profession or who have exceptional ability in the sciences or the arts, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed.

---

[5] Wasserman, "The Twenty-Fourth Amendment to the Walter-McCarran Act". Interpreter Releases, 43:1.3, 1966.

The Regulations

The regulations of the U.S. Department of Labor governing applications for alien labor certifications may be found in 20 CFR, Part 656, most recently amended effective February 18, 1977. Proposed amendments to these regulations were published in the *Federal Register* of January 22, 1980. The potential effect of these proposed changes will be dealt with in footnotes below.[6] The regulations specify in which cases of alien immigration the labor certification requirement must be met. They further specify the procedures to be followed in applying for an alien labor certification, and the remedies available for denial of such certification.

The Operations Instructions

The "Operating Instructions Handbook for Immigrant Labor Certification Program", published on October 27, 1977, consists of the directives issued by the Department with reference to the procedures to be followed in applying for alien labor certifications and adjudicating them. They expand upon the departmental regulations and are generally keyed to the appropriate sections and subsections of the regulations. They can be of particular value to a practitioner who is attempting to ascertain how the Department of Labor will apply the regulations to a specific set of facts.

I believe these Operations Instructions to have been adopted improperly for they materially alter the Regulations and were never published in the *Federal Register* as required by the Administrative Procedure Act. For example, they designate as "inappropriate" for adjudication any job offer in a religious capacity requiring less than 2 years' experience, thus improperly eliminating a type of application formerly acceptable, without an amendment of the Regulations or the Statute.[7]

Schedules

The regulations prescribe two schedules of labor certifications in which the Aministrator of the United States Employment Service has determined (Schedule A) that there are not sufficient United States workers able, willing, qualified and available for the occupations listed in such Schedule and Schedule B where the Administrator has determined that there are generally more than sufficient United States workers to perform such duties. The schedules, which appear at 20 CFR 656-10 and 20 CFR 656-11, define the labor certification areas in which the practitioner may not find it necessary or advisable to file a labor certification application. If the alien qualifies under Schedule A, no labor certification application need be filed with the U.S. Department of Labor, and the regulation prescribes a procedure by which the applicant or his employer may obtain a confirmation of such blanket labor certification in his case. In the case of Schedule B employment, there is a presumed oversupply of American workers available to perform the job duties as defined in each of the specified categories and a special procedure is prescribed to overcome this regulatory presumption. We are here concerned with applications for alien labor certifications which are not contained in either of the above mentioned Schedules.

---

[6] *See. Federal Register.* Vol. 45. No. 15. Tues. Jan. 22, 1980, p. 4918 *et seq.*

[7] The Department of Labor has recently changed its position and acknowledged that an individual Labor certification would be considered in this type of case. This was confirmed to the author by Mr. Aaron Bodin. Head. Labor Certifications Branch. Department of Labor.

Aliens Exempted from the Labor Certification Requirement

The labor certification requirement of the law applies to aliens who seek to obtain their residence under the third preference, the sixth preference or the nonpreference portion of their respective quotas. Even aliens who qualify for processing under these three categories may be exempted from the labor certification requirement if they qualify for residence under one of the other preference categories, generally involving a relationship to a citizen or lawful permanent resident of the United States. Also, a person who is an immediate relative[8] of a United States citizen is likewise exempted from the labor certification requirement.

Moreover, in view of the fact that the statutory requirement for a labor certification applies explicitly to those "seeking to enter the United States, for the purpose of performing skilled or unskilled labor", even aliens apparently subject to the labor certification requirement may be exempted if they are able to show that they are not entering the United States for the purpose of employment. This includes members of the armed forces of the United States, persons coming to marry a United States citizen or female aliens coming to marry a lawful permanent resident, foreign investors in a business in the United States who qualify under the investor regulation, accompanying family dependents of aliens who have qualified for immigration to the United States, aliens coming to the United States for the purpose of retirement, and aliens too young, too old or too feeble to work, where it is shown that they will not be required to engage in employment and will not become public charges in this country. The labor certification requirement also does not apply to seventh preference aliens, such as refugees from Communist countries or countries within the general area of the Middle East and certain "special immigrants",[9] including returning residents, certain former citizens of the United States, ministers of religion and employees or retired employees of the United States government abroad.

---

[8] Sec. 201 (a) of the Act, 8 USC 1151 (a).

[9] As defined in Sec. 101 (a) (27) (A) of the Act, 8 USC 1101 (a) (27) (A).

Finally, it should be noted that further exemptions from the labor certification requirement existed prior to January 1, 1977 when significant changes occurred in the Immigration and Nationality Act by statutory amendment. Aliens who secured their registration priorities on immigrant visa waiting lists under prior law have, under the savings clause of the statute which took effect on January 1, 1977, preserved their exemption from the alien labor certification requirement. This includes natives of the Western Hemisphere who were the parents of children who were born in this country or who were lawful permanent residents of this country. Such applicants would have a confirmed priority date at an American Embassy based upon the birth of a child or a Notice of Approval of their application Form I—550 by the Immigration and Naturalization Service with a priority date prior to January 1, 1977. These cases may be completed without obtaining labor certifications.

These exemptions from the labor certification process can be of particular significance in allowing aliens who would otherwise not be able to obtain a labor certification to enter the United States. For example, a medical doctor who, pursuant to the Operations Instructions of the Department of Labor, could not even obtain a labor certification unless he had already passed the Visa Qualifying Exam, would still be able to enter the United States and practice his profession, after fulfilling the proper state licensing procedure, if he came under one of the exemptions described above.

Analysis of the Labor Certification Case

One of the preliminary inquiries which an attorney must make in analyzing a new matter is to determine whether or not the labor certification requirement needs to be met. Many a novice has spent unnecessary and embarassing hours of effort in applying for a labor certification in a case in which it was never required. There is no substitute for experience in this initial analysis of a case. For example one alien inquirer was astounded to learn that the labor certification requirement would not have to be met in his case because his uncle, a U.S. citizen, was able to sponsor his father's immigration, to the United States under the fifth preference. His father could then petition for his son under second preference category. (sic)

[*See insert*]

In this regard one might wish to consult the Operations Instructions, which outline the policies of the Department of Labor as to what will be considered to be within the purview of Schedule A. Note, however, that their guidelines might be unnecessarily restrictive and limiting. Since it is the Immigration and Naturalization Service, through the person of its District

---

[10] 20 CFR 656.22.

Director, or the Department of State, through the consular officers, who will make the determination as to whether a particular alien is entitled to Schedule A treatment, one should not feel bound by the Operations Instructions if he believes the employment reasonably fits within the regulations.

Should the job to be performed appear to be relatively simple or uncomplicated, the attorney ought to consult Schedule B [11] to determine whether the job category is listed. Each work category is defined, so the task should not be difficult. If the job would appear to be a Schedule B job, the employer should be consulted to determine whether he feels this classification is unfair in his case. If he believes that there is nevertheless a shortage of qualified Americans to peform the job, he may still petition but must first place a job order with the local office of the State Employment Service and prove the unavailability of qualified workers requesting a waiver of Schedule B in his case. [12]

Assuming that the alien is not exempt from the labor certification requirement, and that his job classification is not included in Schedule A or Schedule B, an application for an alien labor certification may then be a proper remedy.

Doctors

It is worthy of mention at this time that legislation sponsored by the Department of Health, Education and Welfare has resulted in special requirements with regard to medical personnel. Pursuant to Public Law 94—484 the finding was made that there is no longer a shortage of medical doctors in the United States. Accordingly, immigration to the United States for medical doctors was limited, with certain exceptions, to those who can show a competency in English and pass a Visa Qualifying Exam.

The effect of this legislation on Department of Labor procedures is unclear. Although there was a finding that there is no longer a shortage of doctors in the United States, this may not be applicable to a specific locality which might be in desperate need of medical personnel. It would, therefore, be appropriate for a doctor to be able to obtain a labor certification and even to qualify under Schedule A in certain circumstances. [13] However, as a matter of policy, the Department of Labor has refused to accept applications for a labor certification for doctors unless they have already passed the Visa Qualifying Exam or established that they are exempt from it. On principle, this policy is subject to challenge, as the Labor Department traditionally considered applications for positions requiring licensure, *e.g.*, nurses, before the aliens sat for their qualifying tests. The job requirement was always, appropriately, "qualified to take the licensure test".

---

[11] 20 CFR 656.11.

[12] The proposed regulations would authorize the adversary procedure of allowing the applicant to rebut the Certifying Officer's findings in Schedule B cases.

[13] The proposed regulations would effectively limit Schedule A, Group I, to health related fields and would include doctors within certain geographic areas where their specialties had been individually approved by the Department of Health, Education & Welfare as being shortage areas.

Schedule A Cases

Schedule A is a list of occupations for which the Department of Labor has made a determination that there are not sufficient workers who are able, willing, qualified and available and that the employment of aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The Schedule is presently divided into four groups:

> Group I: Group I includes persons with advanced degrees. Presently it includes those having an advanced degree equivalent to a Ph.D or Master's degree only in the field of dietetics; it also presently includes aliens with the equivalent of a Bachelor's degree in physical therapy. [14]
>
> Group II: Group II includes aliens, except for aliens in the performing arts, of exceptional ability in the sciences or arts, including college and university teachers with exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or university in order to qualify for the Group II occupation. Thus, Einstein, Picasso and Fermi would qualify for Schedule A classification. However, Nureyev, Artur Rubinstein and Joan Sutherland, although of exceptional ability, would not qualify for Schedule A because they are in the performing arts.
>
> Group III: Group III includes religious workers, namely, those who seek admission to the United States in order to perform a religious

---

[14] The proposed new regulations would delete dieticians from Schedule A. Physical therapists would require documentation that they are eligible to sit for the licensure exam in the state of their proposed employment. Certain registered nurses would be added to Schedule A, provided that the Department of Health, Education & Welfare had designated that a shortage existed in the area in which they intended to perform their services. Likewise, the proposed regulatory amendment would require that all nurses, including those proposed to be included within Schedule A, pass a nurse's licensure examination. A more appropriate requirement for nurses would be that they, too, be required to show that they were eligible to sit for the examination. This would permit them to file their labor certification applications and avoid needless delay in obtaining valued priority dates on waiting lists.

occupation, such as the preaching or teaching of religion, and aliens with a religious commitment who seek admission into the United States in order to work for a nonprofit religious organization. This category of worker requires two years' experience prior to application.

Group IV: Perhaps the most significant Schedule A group includes those working in managerial or executive positions with the same international corporation or organization with which they have been continuously employed for one year previously. In general, these aliens are required to have the qualifications of intra-company transferee visa holders, although they need not have had such status.[15]

PREPARING THE LABOR CERTIFICATION APPLICATION

Where Filed

The application for alien labor certification is made to the United States Department of Labor through the local office of the State Employment Service having jurisdiction over the alien's place of intended employment.

When Filed

The application may be filed at any time and is generally accorded a priority date which accords with the date of receipt of the application at the local post office of the State Employment Service, provided that the application is substantially complete upon its filing. Since February 18, 1977, the effective date of the new Labor Department regulations, an advertising requirement must be complied with in each case, and the application must be filed within a specified period after the most recent advertisement. Check local rules for this period of time and, in general, as to all advertising requirements.

Forms Required to be Filed

The following forms must be filed in each case:

Form MA—7—50—B. A job offer describing the available position, the salary offered and related job requirements.

---

[15] The proposed amendments to the regulations would severely limit the use of Schedule A, Group IV. They would require that the business enterprise sponsoring the alien for admission has been "doing business" in the United States for a least one year prior to the filing of the application for labor certification. "Doing business" is defined as a "regular, systematic, continuous course of conduct...and shall not be limited to the mere presence of an agent or office in the United States of the international corporation or organization...". An additional proposed change would require that the alien have had experience as a manager or executive outside the United States. This would negate the effect of several administrative decisions which liberalized the application of Schedule A.

Form MA—7—50—A. Sets forth the alien's occupational background, specifying his education, training and experience which qualifies him for the position.

Form MA—7—50—C. A supplemental form for use only in cases involving "live-in" positions specifying additional information about the household in which the alien will reside.

Contract of Employment

Only required in live-in occupation cases specifying the complete duties, hours, salary, notice of termination requirement, etc., of the live-in position.

Statement of Compliance with the New Regulations

A statement, to be composed individually in each case according to local requirements, of compliance with the regulations of the U.S. Department of Labor. This statement essentially confirms that the employer has been recruiting at the prevailing wage and working conditions but has been unable to find a suitable American worker and includes specific reference to his advertising for the position, attaching clippings of the relevant advertisements. This latter requirement is new in the regulations as is the advertising requirement and should be complied with meticulously. The number, type, and content of the advertisements required should be checked out locally before any advertisement is placed in a newspaper to assure that it will comply with the regulations. Moreover, it is important to be certain that the timing of the filing of the application is proper, as each region of the U.S. Department of Labor has local rules requiring that applications be filed within a specified number of days or weeks of the most recent advertisement. The statement of compliance should likewise specify what responses, if any, were made to the advertisement and if applicants came forward, why they were considered to be unqualified, unable or unwilling to perform the job duties.

Market Research Required for Filing Application

Before filing an alien labor certification, the attorney should do labor market research into the availability of qualified workers in the alien's intended field of employment. The employer is often the best and most readily available source of information. Other sources of information include trade organizations, unions, professional organizations, newspaper advertisements, employment agencies specializing in the field of work and the State Employment Service. Available sources of information should be cited in the supplement to the application, to assist the Labor Department in its review of the application. A statement from the union, employer's organization, hiring hall or reference to a local office employee at the State Employment Service will often tip the scale in favor of a favorable determination. On the other hand, unfavorable labor market research results may convince the attorney to hold off filing the application or to decline to file it entirely.

Analysis of the Job Duties

The labor certification application (Form MA—7—50—B) should read in simple straight-forward language, describing a job, however complicated, in nontechnical language. It should essentially answer "what" the alien is to do, "how" he intends to do it, "when" and "where" he performs his duties, and specify what special requirements, if any, are needed to perform the job.

It is often necessary to do outside research to understand the employer's need for the alien's services and the special, technical requirements of the employer's available position. There is no substitution for a clear and precise understanding of the job duties and their simple, succinct expression. The job description is the key item in the labor certification application, as the government will often disregard the job title chosen by the employer if it does not conform with the more specific requirements of the job duties. No amount of confusion or obfuscation will generally deter the Department of Labor from its essential task of analyzing the job duties and determining the availability of qualified, willing and able Americans to perform them.

Specifying the Job Requirements

The job requirements to be specified in the labor certification must, in essence, be "reasonable". Accordingly, an employer offering a job to a cabinetmaker with 35 years' experience can generally not say that he would have required 35 years' experience from any job applicant. It is more likely that he would require a substantially lesser number of years, but still a number which he feels is minimum to achieving proficiency for his required level of performance. The U.S. Department of Labor has literature specifying the minimum number of years to achieve general proficiency in most areas of work. In addition, the employer himself is often an excellent source of this type of information.

Educational requirements should not be stated unless they are truly required for the performance of the job duties. Thus the requirement of bachelor's degree in engineering would be presumably unreasonable requirement for a bricklayer, in the absence of special circumstances. The attorney's function is to determine a reasonable minimum requirement for qualification for the position without tailoring it to the alien's particular background. Consult the *Occupational Handbook* published by the U.S. Department of Labor, for the usual requirements in various types of work.

Note that the labor certification application form has separate areas to specify training requirements as distinguished from experience requirements and educational requirements as distinguished from both. Moreover, the form permits an employer to specify more than one basis of qualifying for a job, as it permits an alternate type of experience requirement to be specified. These possibilities should be studied carefully before the application is completed, and reviewed thoroughly with the employer.

Special Job Requirements — Languages

The Department will look carefully at any job requirement which will *per se* severely limit the spectrum of job applicants and may not necessarily be an intrinsic requirement of the job. Most often in this category is the foreign language requirement. The Department will carefully scrutinize any application which indicates that knowledge of a foreign language is a necessity of a particular job. If, after a careful analysis, it is found that it is indeed a necessary part of this employment, it is important to document this need and to justify it, or the application will not be accepted for processing. Separate documentation should be submitted to demonstrate the need for the use of languages on the job, as well as the cost of inconvenience of employing a person who does not have this special knowledge.

Specifying the Prevailing Rate of Pay

The labor certification application should offer the alien the prevailing rate of pay and working conditions which are prevailing for the community. Although it has always been difficult to determine an exact prevailing rate of pay in advance of filing a labor certification application, the new advertising requirement has placed the Department of Labor in a position where it must notify employers in advance of the prevailing rate of pay for a specific job. Otherwise, the employer's advertisement could never specify what the employer could rely upon as being the prevailing wage rate. Accordingly, the U.S. Department of Labor or its local state cooperating offices should be contacted in each case to determine the prevailing wage rate for the job in question. If this appears to be a wage higher than that which the employer offers, further research ought to be done. The best source, and the one usually consulted by the Labor Department, is the Bureau of Labor Statistics, which will have its most recent survey available at its local reading room. While the Department of Labor generally chooses the median rate where a number of rates are scheduled, the specifics of the scheduled rates should be studied carefully to determine whether the employer's rate is not truly the prevailing one. For example, the secretarial rate varies according to the number of employees in the employer's place of business, according to the Bureau of Labor Statistics survey consulted by the Manpower Administrator. It is, therefore, quite possible that the rates generally specified and quoted by the Labor Department may, in actuality, vary from case to case. There is no substitute for this type of labor market research into the prevailing rate of pay.

It should also be noted that the courts have held that an arm's length negotiated labor union contract which specifies a rate of pay below what the Labor Department considers to be prevailing, will nevertheless provide an acceptable rate of pay for labor certification purposes.

The Employee's Qualifications

It goes without saying that an alien must qualify for the job being offered on the Form MA—7—50—B. Accordingly, his biographic and occupational data as indicated in Form MA—7—50—A would provide the necessary skills and experience, training and education which are required for the job. The form itself does not require experience dating beyond the past three years, but if it is required to perform the job duties as specified in the job offer form, it ought nevertheless be stated in the alien's qualification Form MA—7—50—A.

In live-in domestic jobs where there is a job experience requirement, documentation should be attached to prove that the alien has the necessary experience. The Labor Department's regulations prescribe that the alien must attach to his application documentation of his paid experience in the form of statements from past or present employers setting forth the dates of employment, hours of work per day, number of days worked per week, place where the alien worked, detailed statement of duties performed on the job, etc. (*See*, Regulations 656—21).

In addition to the proof of experience, the Forms MA—7—50—A, MA—7—50—B, MA—7—50—C and newspaper ads, the alien must sign a contract of employment, required to be filed in live-in occupation cases.

LABOR DEPARTMENT PROCESSING

Upon receiving the application, the local office places its date stamp, which eventually becomes the alien's nonpreference priority date, assuming the eventual approval of the application, on the certification form, if the form is found to be complete. If it is not, it is returned to the employer with instructions.

If the application is found to be complete, the local office of the State Employment Service prepares a "Job Order". If the local office believes the job to be discriminatory, it may contact the employer directly to eliminate any discriminatory aspects of the application. Regulations then require the local office to determine the prevailing rate of pay and set forth its finding in writing. 20 CFR 656—21 (f). If the wage is considered to be too low, the local office will contact the employer to request an increase in the wage offer. The regulations then require that the local office, in cooperation with the employer, attempt to recruit U.S. workers for a period of 30 calendar days by placing the job order into the employment service recruitment system for such period of time. As part of this procedure, the regulations require that the employer place a further newspaper ad in a paper of general circulation with the applicants responding to this ad being referred through the local office of the State Employment Service for referral to the employer.[16] If the recruitment is not successful, the local office is required to forward the application to the State office or to the Regional Certifying Officer for his determination. If a State office is involved, it may add its own appropriate data or comments to the application before transmitting it to the Regional Certifying Officer.

LABOR DEPARTMENT DETERMINATION

Procedure

The determination of the Labor Department is generally made by the Regional Certifying Officer. He may, however, consult with or transmit the application for determination to the National Certifying Officer in appropriate cases.

The determination is either to grant a labor certification or to issue a Notice of Findings to the employer with a copy to the alien.

The Notice of Findings must include a date, the basis on which the decision is made, and afford notice, no later than thirty-five days from the date of Notice of Findings, by which documentary evidence may be submitted to rebut the basis of the determination. The Notice also includes a statement that the findings shall become the final decision in the case if no contrary evidence is submitted within the thirty-five day regulatory period.

Rebuttal evidence may be submitted by the employer, and in cases where the employer does submit such evidence, by the alien as well. The regulations require that it be filed by certified mail with the Certifying Officer who shall review it and enter a final determination.[17]

A copy of the final determination is likewise served upon the employer and the alien.

Standards for the determination of the Certifying Officer are set forth in the Regulations.[18] He is called upon to determine "if there are no other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers" and shall consider a U.S. worker as being available if one is located who is "able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed" except in the case of college or university teachers or persons of exceptional ability in the performing arts, in which case he is required to find a U.S. worker at least as qualified as the alien. He is required to "consider as many sources as is appropriate" and "shall look to the Public Employment Service as one source". He is to consider U.S. workers working "in the area of intended employment" but may also consider U.S. workers who would be "willing to move from elsewhere to take the job".

---

[16] The proposed regulations would combine the present two stage advertising procedure into one and prescribe a uniform national advertisement rule.

[17] 20 CFR 656.25.

[18] 20 CFR 656.24.

In reaching a determination of adverse effect, he is to consider "such things as labor market information, the special circumstances of the industry, organization and/or occupation, the prevailing wage in the area of intended employment and the prevailing working conditions, such as hours in the occupation".

The standards for the Certifying Officer's determination, as described in the regulations, appear to be excessively broad.

Special Cases

Certain categories of applications for labor certification are handled directly by the National Office of the Department of Labor for various policy reasons. Included in this category are: 1)sheep herders and chicken sexers; 2) airline attendants, if U.S. workers are not readily available locally; 3) underground miners if U.S. workers are not readily available locally; 4) occupations in the construction trades involving ten or more aliens for one employer; 5) professional baseball, hockey, jai-alai, soccer, volleyball and lacross players and coaches, as well as support personnel in professional sports; and 6) applications for aliens represented to be of exceptional ability in the performing arts.

From time to time the national office will make a special request to determine at the national level a specific labor certification application. Special procedures are outlined for the following of these applications. If a practitioner has a potential application which may fit into one of these categories, he would be well advised to consult the Operations Instructions and to get in touch with the National Office of the Department of Labor directly.

ADMINISTRATIVE REVIEW

The regulations refer to the Administrative Review of the Certifying Officer's determination as being "administrative-judicial review".

Administrative Review may be requested by the employer. In cases where the employer actually requests administrative review, the alien may likewise request such review. the regulations do not permit the alien to request Administrative Review in the absence of the employer's request.[19]

The request for review must be made by certified mail to the Certifying Officer who denied the application within thirty-five calendar days of the date of the determination as specified on the determination and transmittal form, should clearly identify the particular labor certification from which review is sought and must set forth the particular grounds for the request and include all documents which accompanied the determination and transmittal form.

Upon receipt of such a request, the Certifying Officer is mandated to assemble an "Appeal File" in chronological order with an index which must contain the complete application file and copies of all other written materials such as pertinent parts and pages or surveys, reports, etc., upon which the denial was based. The appeal file is transmitted to the Chief Administrative Law Judge of the Department of Labor in Washington, D.C.

The regulations provide further that a hearing officer designated by the Chief Administrative Law Judge is to permit the parties thirty-five days to submit documentation in support or opposition of the appeal. The hearing officer has authority to affirm the denial, direct the Certifying officer to grant the certification, remand the matter to the Certifying Officer for further consideration, or direct that a hearing be held in the case. The hearing officer's conduct of a hearing requires transcribing and recording the testimony except for stipulated parts of the record. Hearings are to be held in accordance with prescribed portions of the Administrative Procedure Act.[20]

The general provision governing discovery as provided by the Rules of Civil Procedure for the United States District Courts apply to the extent that the hearing officer may consider them helpful. the hearing officer has jurisdiction to decide all issues of fact and related issues of law, but is explicitly restricted from deciding upon the validity of federal statutes or regulations. His findings are reduced to a written decision and order which he serves on the parties. His decision is the final decision of the Secretary of Labor.

Availing oneself of the appeal procedure in his case is vital because the regulations[21] prescribe that a new labor certification application by the same employer in the same occupation may not be filed until six months have passed following a denial of such certification. This does not apply to denials based solely upon wage or salary offered.

---

[19] This would appear to be an improper rule, as the courts have permitted judicial review upon the alien's suit. *Stenographic Machines, Inc. v. Regional Administrator*, 577 F. 521, 7th Cir., 1978.

[20] 5 USC 553 et seq.

[21] 20 CFR 656.29.

Role of Prior Administrative Decisions

The Department of Labor has decided to designate certain of its decisions as precedents. Such decisions are to be included in the "Operations Instructions Handbook". The Instructions provide that:

> When a precedent decision is wholly applicable to the facts in an application for Alien Employment Certification, the decision must be considered by the Certifying Officer in making the determination required by 20 CFR 656.24.

This somewhat ambiguous language appears to limit the precedential effect only to cases where the significant facts are identical. It is also unclear from the Operations Instructions whether the prior decision is considered binding or not, reflecting the Labor Department's much criticized position of considering itself free of the effect of *stare decisis*. In actual practice the publication of these precedents should have a more significant effect than that described in the Instructions.

The Instructions also provide that state agency personnel should be guided by these decisions when determining which documentation and information to secure in support of an application before a determination is reached.

A CRITICAL ANALYSIS OF THE CURRENT ADMINISTRATION OF THE LABOR CERTIFICATION PROVISION

The Department of Labor has constructed a confusing, involved, elaborate and overly complicated procedure to carry out the simple mandate of the single section of law which brings it into the administration of the immigration law. As a result, it has been almost uniformly subject to criticism in the courts. In no other are of the immigration law has there been such consistently successful litigation waged against a government agency charged with enforcing a provision of the immigration law. On numerous occasions, the courts have ruled that the Department of Labor has too broadly construed the authority delegated to it and, while authorized to carry out a mandate, has all too often abused its discretion.

In a case where a labor certification as a "plastic polisher" was denied on the ground that the occupation was such that U.S. workers could be trained to do the job within thirty days to three months, the court held that the Department of Labor acted beyond the scope of its authority. Ruling that the Labor Department's sole authority was to determine the factual availability of American workers, the courts held that it was not within the authority of the Department of Labor to deny the certification because of the presumed ability to train American workers.[22] Moreover, although the regulations of the Department of Labor deny an alien permission to file an administrative appeal unless his employer does so, the Seventh Circuit has held that an alien who is denied a labor certification may sue for judicial review of the denial even if the employer does not bring suit.[23] The court recognized that the alien's economic interests were injured by the unlawful denial of the labor certification. Likewise, the employer was held equally able to bring suit for unlawful denial of the labor certification.[24]

The courts have on numerous occasions held that the Secretary of Labor abused his discretion in denying labor certifications. It was so held in a case in which a denial was based upon a mere conclusory statement that some two hundred electrical engineers were listed in the Registry maintained in Sacramento, California;[25] in a case in which the Secretary of Labor denied a certification merely because of the existence of a list of stenographers at a State Employment Service without showing that such stenographers were indeed qualified and available for employment;[26] in a case in which the Department of Labor denied a labor certification relying upon computerized statistics from employment agencies and information from other states, without showing that resident workers were willing, qualified and available to fill the job opening for an industrial engineer;[27] in a case wher the denial of labor certification was based upon the mere recital of state employment statistics that there were twenty persons registered as seeking chemistry positions.[28]

Likewise, the courts have found numerous denials of due process in the Labor Department's administration of the law. The Second Circuit held that it was a denial of due process to suspend a "precertification list" which exempted aliens engaged in listed occupations destined for geographic areas from the requirement of a specific job offer, based upon the fact that the Department of Labor failed to comply with the due process rulemaking requirements of the Administrative Procedure Act.[29] Likewise, it was held that a denial of labor certification referring only in general terms to available U.S. engineers was invalid in that it denied the applicant the due process right of a sufficient notice as to the basis for the decision denying the certification.[30] Other courts found denials of due process when the Department of Labor attempted to retroactively limit the validity of a labor certification[31] and denied a labor certification without furnishing a full record as to the basis for denial.[32]

---

[22] *Jersey Plastic Molders, Inc. v. Secretary of Labor*, C.A. No. 74—845 D.C.N.J. (an unpublished decision).

[23] Stenographic Machines Inc. v. Regional Administrator, 577 F. 521, 7th Cir. 1978.

[24] *Secretary of Labor v. Farino*, 490 F.2d 885, 7th Cir. 1973.

[25] *Digilab Inc. v. Secretary of Labor*, 495 F.2d 323, 1st Cir. 1974.

[26] *First Girl, Inc., v. the Regional Manpower Administrator*, 361 F.S. 1339, D.C. 111, 1973.

[27] *Parikh v. Regional Manpower Administrator*, 431 F.S. 38, D.C. 111, 1976.

[28] *Sherwin-Williams Co. v. Regional Manpower Administrator*, 439 F. Supp. 272 N.D. 111, 1977.

[29] *Lewis-Mota v. Secretary of Labor*, 469 F.2d 478, 2nd Cir., 1972.

In one case,[33] the Department of Labor's response to a court decision had a greater significance than the decision itself. The court had held that a labor certification was improperly refused to a parochial school teacher based upon a showing by the Department of Labor that there was an oversupply of available public school teachers. The Solicitor of the Department of Labor ruled that he would be bound by the decision only in Philadelphia, the are in which the court had jurisdiction, and refused to enforce it in any other area in the United States. This attitude was remarkably dissimilar to that of the Immigration and Naturalization Service and the U.S. Department of State, whose obligations in enforcing the immigration laws are much broader.

Since the federal courts are the arena in which the administration of a federal agency's law mandate is exposed to review by the general nonspecialized legal community, the severely critical view portrayed in federal court decisions of the Secretary of Labor's administration of the labor certification provision should be a matter of grave concern to us all.

RECOMMENDED CHANGES

The labor certification provision of the law affects only a minute portion of the large number of aliens who immigrate to the United States lawfully and unlawfully each year. Moreover, studies have found that aliens arriving with labor certifications do not tend to remain in the certified positions for extended periods of time. Indeed, the shortage of qualified workers which existed at the time of application for the labor certification often no longer exists at the time the alien qualifies for permanent residence, a process which can take several years in many cases. As a result, it is quite possible that the expenditure of so much government time, effort and money on a program with so little practical effect upon the labor market of the United States no longer makes sense.

The provision has probably also outlived its usefulness. The original purpose of the 1965 amendment which made the labor certification a true exclusionary ground was the protection of the American labor market.

---

[30] *Reddy, Inc. v. Department of Labor,* 429 F.2d 538, 5th Cir., 1974.

[31] *Maceren v. District Director, Immigration and Naturalization Service,* 509 F.2d 934, 9th Cir., 1975.

[32] *Yong v. Regional Manpower Administrator,* 509 F.2d 243, 9th Cir., 1975.

[33] *Golabek v. Regional Manpower Administrator,* 329 F.S. 892, D.C., Pa., 1971.

However, it was well recognized at the time that this was not its only purpose. It was fully recognized at the time that the additional purpose for the law was the need to restrict immigration to the United States from the Western Hemisphere which, in 1965, had no numerical limitation and from where, without doubt, the largest number of unskilled workers immigrated to the United States. When, in 1968, there was enacted into law a numerical restriction upon Western Hemisphere immigration to the United States, the need for this restrictive version of the labor certification requirement ceased to exist. What we are left with is plainly a relic of an earlier immigration pattern, no longer required for our present immigration needs.

Table of Cases

Almeida-Sanchez, 91
Au YiLau v. INS, 93

Barthold v. INS, 58
Blackie's House of Beef v. Castillo, 94
Boutillier v. INS, 50
Brignoni-Ponce, 92, 93, 95
Bugajewitz v. Adams, 57, 65

Cheung Tin Wong v. INS, 93

Digilab Inc., v. Secretary of Labor, 113

First Girl, Inc. v. the Regional Manpower Administrator, 113
Fong Haw Tan v. Phelan, 60
Fong Yue Ting v. U.S., 57
Francis v. INS, 46

Galvan v. Press, 49, 56, 57
Gastelum-Quinones v. Kennedy, 49
Golabek v. Regional Manpower Administrator, 114

Harisiades v. Shaughnessy, 57

I.L.G.W.U. v. Sureck, 94
Illinois Migrant Council v. Pilliod, 93
In re Brody, 52
In re Labady, 52

Jersey Plastic Molders, Inc. v. Secretary of Labor, 113

Kessler v. Strecker, 47
Kleindienst v. Mandel, 57
Knauff v. Shaughnessy, 57

Lennon v. INS, 46
LeTourneur v. INS, 57
Lewis-Mota v. Secretary of Labor, 113
Lieggi v. INS, 46

MacKay v. McAlexander, 57
Maceren v. District Director, Immigration and Naturalization Service, 114
Matter of Andrade, 46
Matter of Cienfuegos, 60
Matter of G, 53
Matter of Garcia-Fores, 95
Matter of Sandoval, 58, 95
Matter of Silva, 46
Matter of Toro, 95
Matter of Werk, 46
Matter of Zingis, 46
Mestre-Morera v. INS., 46
Marcello v. Bonds, 57, 58
Marquez v. Kiley, 93, 94
Martinez-Fuerte, 92

Narenji v. Civiletti, 57
Ng Fung Ho v. White, 60

Oceanic Steam Nav. Co. v. Stranahan, 57
Oliver v. U.S. Department of Justice, 46

Parikh v. Regional Manpower Administrator, 113
Pilliod, 94

Reddy, Inc. v. Department of Labor, 114
Reynolds v. U.S., 53
Rowoldt v. Perfetto, 49

Sandoval, 95
Schneiderman v. United States, 55
Secretary of Labor v. Farino, 113
Stenographic Machines, Inc. v. Regional Administrator, 111, 113

Terry v. Ohio, 91
Turner v. Williams, 57

United States v. Almeida-Sanchez, 90
U.S. v. Alvarez-Gonzales, 90
U.S. v. Barbera, 90
U.S. v. Bowen, 90
U.S. v. Brignoni-Ponce, 91
U.S. v. Janis, 95
U.S. v. Martinez-Fuerte, 92
U.S. v. Ortiz, 92
U.S. v. Ramsey, 90
U.S. v. Saenz, 91

Wong Yang Sung v. McGrath, 58

Yong v. Regional Manpower Administrator, 114

Zepada v. INS, 94

Index

Administrative Procedure Act, 58, 111, 113
Albuquerque, 37 *n.*
Alien Act of 1798, 58
Alien Registration Act, 63
Alien Registration Act of 1940, 47 *n.*
Amnesty, 83–84, 88
Antin, Mary, 41
A. Philip Randolph Institute, 83
Austin, Texas, 37 *n.*
Bhagwati, J., 33 *n.*
Birthright, 71
Board for the Determination of Asylum and Refugee Status, 88
Board of Immigration Appeals, 53, 55, 58, 90, 91, 92, 93, 94, 95
Böhning, W.R., 38 *n.*
Boulder, Colorado, 37 *n.*
The Brain Drain and Taxation, 33 *n.*
Bresman, Justice, 92
Brooklyn School of Law, 89
Buffalo, New York, 37 *n.*
Bureau of Labor Statistics, 32, 107

California, 10, 14, 37 *n.*
Carter, Jimmy, 38, 84
Catholic Church, 67
Catholic Migration and Refugee Office, 67
Census Bureau, 10, 32 *n.* 43
Census, 1970, 9, 11
Census, 1980, 10, 12
Center for International Studies, 15 *n.* 16 *n.*
Center for Labor and Migration, 19 *n.*
Challenge, 33 *n.*
Characteristics and Role of Illegal Aliens in the U.S. Labor Market, 27, 35 *n.*
Chicago, Illinois, 79
China, Chinese, 77, 78
Chinese Exclusion Act, 58
Chiswick, Barry, 24
Chrysler, 26
Code of Federal Regulations, 88
Cold War, 55
Colombia (Colombians), 78
Communism, as a ground for deportation and exclusion, 47–50
Communists, 52, 62
Congressional Record, 14 *n.* 16, 24 *n.*
Contract Labor Act of 1885, 97
Cornelius, Wayne, 15, 16, 24, 36
Costs and Benefits of Education, 33 *n.*
Crossland, David, 4
Cuba (Cubans), 30, 31 *n.*

Dallas, Texas, 37 *n.*
DeHaan, Dale, 87
Denver, Colorado, 37 *n.*
District of Columbia, 10
Dominican Republic (Dominicans), 71, 78

Employment Standards Administration, 80

Fair Labor Standards Act, 80
Federal Register, 99
Federation of Americans for Immigration Reform, 10
Florida, 14
Food Stamps, 15, 69
Foreign Affairs Manual, 47–48, 49
Frankfurter, Justice, 56

Germany, 62
Goldman, Emma, 41
Guestworker Programs, 13–17, 28, 37–40

Holmes, Justice, 65
Homosexuality, as a ground for deportation and exclusion, 50–52
Hong Kong, 71
Houston, Texas, 37 *n.*
Houstoun, Marion, 15, 27, 35 *n.*
Humphrey-Hawkins Full Employment Act, 32

Illegal Aliens: An Assessment of the Issues, 32
Illinois, 10, 14
Immigration Act of 1917, 52
Immigration Commission of 1907, 52
Immigration and Nationality Act of 1952, 47, 50, 59, 60, 97
Immigration and Nationality Act of 1965 45–53, 58–65. 89–95 98–115
Immigration and Naturalization Service 3, 4, 21, 31 *n.* 32 *n.* 44, 45 *n.* 46, 47, 51, 58, 63, 69, 70, 73, 80, 89, 101, 104
Indochina (Indochinese), 14, 30, 31 *n.*
INS Annual Report, 21 *n.*
Internal Revenue Service, 32 *n.*

Internal Security Act of 1950, 47
International Labour Review, 38 *n.*
International Ladies Garment Workers Union, 34, 75, 78, 79
Interpreter Releases, 55, 98
Iran, 57

January Alien Registration Program, 10—13
Jersey City, New Jersey, 37 *n.*
Journal of Political Economy, 24 *n.*

The Labor Supply for Lower-Level Occupations, 34
Lazarus, Emma, 41
Legal Aid Society, 70
Leichter, Franz, 78
Leiter, R.L., 33 *n.*
Lopez-Portillo, José, 38
Los Angeles, California, 16, 21, 78

McKinley, William, 47
Marijuana, as a ground for deportation and exclusion, 45—47, 63
Martin, Phil, 26
Marx, Karl, 15
Massachusetts Institute of Technology, 15 *n.* 16 *n.*
Medicaid, 15, 43, 70
Mexico (Mexicans), 21, 22, 26, 38, 40, 92
Miami, Florida, 21

Narcotics, as a ground for deportation and exclusion, 62
National Commission for Manpower, 33 *n.*
National Commission on Marijuana and Drug Abuse, 45
National Labor Relations Board, 79
New Jersey, 14
New TransCentury Foundation, 19 *n.*, 24 *n.*
New York, New York, 10, 14, 21, 37 *n* 41—44, 71, 76, 78, 80, 94,
New York City Planning Commission, 76
New York Times, 34 *n.* 51, 71, 72
N.Y.U. School of Law, 89
North, David, 14 *n.* 16, 17, 24 *n.* 27 *n.* 35 *n.*, 36—37

Occupational Handbook, 100
Occupational Safety and Health Act, 80
Oklahoma City, Oklahoma, 10
Operations Instruction Manual, 102, 112

Passel, J.S., 32 *n.*
Philadelphia, Pennsylvania, 37 *n.*
Philippines (Philippinos), 71
Phoenix, Arizona, 37 *n.*
Polygamy, as a grounds for deportation and exclusion, 52—53
Public Employment Service, 110
The Public-Interest, 31 *n.*, 33 *n.*
Puerto Rico (Puerto Ricans), 77—78

Refugee Act of 1980, 87
Refugee Protocol of 1968, 87, 88
Reubens, Edwin, 13—17, 25
Robinson, J.G., 32 *n.*

St. John's Law School, 67
San Diego Law Review, 64
Select Commission on Immigration and Refugee Policy, 3—4, 5, 12, 33 *n.*, 66, vii
Seven Years Later, 24 *n.*
Siegel, J.S., 32 *n.*
Smith Act, 63
Social Security, 15, 37
State Employment Service, 102, 104, 105—106, 108—109
Statistical Abstract of the United States, *21 n.*
Stiener, George, 41
Subversive Activities Control Act of 1950, 48—49

Texas, 10, 14

Undocumented Migration, 8—12, 14, 15, 16, 17, 19, 26, 27, 28, 30, 31, 32 *n.*, 36, 37 *n.* 38, 39, 40, 43, 44, 67—72, 76—82, 91
United Nations High Commissioner for Refugees, 87
United Nations Convention on the Reduction of Statelessness of 1961, 88
United Nations Convention Relating to the Legal Status of Stateless Persons of 1954, 88
U.S. Department of Health, Education and Welfare, 102, 103
U.S. Department of Justice, 3, 51, 55, 56, 66
U.S. Department of Labor, 27, 37, 80, 98—115, vii
U.S. Department of State, 21, 47—48, 49, 53, 80, 102, vii
United States Employment Service, 99
U.S. — Mexico Economic Relations, 33 *n.*
United States Public Health Service, 50—51
University of California/Davis, 26
University of Illinois, 38 *n.*
Visa Office, 21
Visa Qualifying Exam, 101, 102

Walter-McCarran Act of 1952, 97
Washington Post, 26—27
Welfare, 15, 34, 42, 69
Workers Exclusion Act of 1965, 98
World War II, 41, 55, 56, 77

Zero Population Growth, 7—8